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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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✓ O.A/T.A No. 26/2004.....

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SECTION OFFICER (Judl.)

Kalita
08/11/17

FORM NO. 4
(SEE RULE 12)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

Org.App/ Misc.Petn/Gent.Petn/ Rev.Appl. 26/04

In O.A. _____

Name of the Applicant(S) A. R. Baishya Jans

Name of the Respondent(S) N.O.I Jans

Advocate for the Applicant M. Chanda, G.N. Chakraborty

Counsel for the Railway/ C.G.S.C. A.K. Chaudhury ^{S. Nath}

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
Application for admission of the applicant for the post of Jans in the Railway. Admitted. No. 16387497. Dated 31-12-03.	17.2.2004	List the case on 19.2.2004 for admission.
	19.2.2004	Heard Mr. M. Chanda, learned counsel for the applicant and also Mr. A.K. Chaudhury, learned Addl. C. G.S.C. for the respondents.
		The application is admitted, call for the records. Returnable by five weeks.
		List on 29.3.2004 for orders. In the meantime, recovery is stayed till the returnable date.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

Application for admission of the applicant for the post of Jans in the Railway. Admitted. No. 16387497. Dated 31-12-03.

17.2.2004

List the case on 19.2.2004 for admission.

[Signature]
Member

bb

19.2.2004

Heard Mr. M. Chanda, learned counsel for the applicant and also Mr. A.K. Chaudhury, learned Addl. C. G.S.C. for the respondents.

The application is admitted, call for the records. Returnable by five weeks.

List on 29.3.2004 for orders. In the meantime, recovery is stayed till the returnable date.

[Signature]
Member (A)

mb

Notice & order dt. 19/2/04 sent to D/section for issuing to the respondent nos 1 to 3.

[Signature]
22/3/04.

29.3.04 Service is not complete. Let service be completed.
List on 28.4.04 for order.
Interim order shall continue.

Pl. comply.
N^o 3
29/3/04

Order dt. 29/3/04
issuing to learned
Advocate at both the
parties.

[Signature]
Member(A)

[Signature]
Member(J)

pg

31.3.2004 Present: The Hon'ble Shri Kuldip Singh
Member (J).

The Hon'ble Shri K. V.
Prahlanan, Member (A).

List the case alongwith M.P.32/2004
on 28.4.2004.

[Signature]
Member (A)

[Signature]
Member (A)

bb

28.4.2004 Written statement has been filed.
List on 12.5.2004 for hearing.

Interim order dated 19.2.2004
shall continue.

19-4-04

WR submitted

by the Respondent

Nos. 1, 2 & 3

[Signature]

[Signature]
Member (A)

mb

14.5.04

Judgment delivered in open
Court. Kept in separate sheets.
Application is partly allowed.

[Signature]
Member(A)

[Signature]
Member(J)

bb

7.5.04

Rejoinder submitted
by the applicant.

[Signature]

19/5/04

Copy of the judgment
has been sent to
the office for
issuing the order to
the applicant as well
as to the Add. C.S.C.
with Resp. to
WR

Recd copy
[Signature]
21/5/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~W.A.~~ No. 1111 26 of 2004.

DATE OF DECISION 14.5.2004

.....Shri. Ananta Ram Baishya & 7 Others.....APPLICANT(S).

.....Mr. M. Chanda, G.N. Chakraborty & S. Nath.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

.....Union of India & Others.....RESPONDENT(S)

.....Mr. A. K. Chaudhuri, Addl. C.G.S.C.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. MUKESH KUMAR GUPTA, JUDICIAL MEMBER.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ? NO
2. To be referred to the Reporter or not? yes
3. Whether their Lordships wish to see the fair copy of the Judgment ? NO
4. Whether the judgment is to be circulated to the other Benches ? NO

Judgment delivered by Hon'ble Member (J).

Jr

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.26 of 2004.

Date of Order : This, the ~~14th~~ Day of May, 2004.

THE HON'BLE SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER.

THE HON'BLE SHRI K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Shri Ananta Ram Baishya
S/o Late Ganeshwar Baishya.
2. Shri Kandarpa Choudhury
S/o Late Rajen Choudhury
3. Shri Bhabanada Sharma
S/o Late Tarinikanta Sharma
4. Shri Kameshwar Kalita
S/o Late Chabin Chandra Kalita
5. Shri Arun Chandra Das
S/o Late S.R.Das.
6. Shri Prafulla Kumar Choudhury
S/o Late B.K.Choudhury.
7. Mrs.Jayanta Devi
S/o Late Angangatal Singha.
8. Mrs. Lily Gohain Das
D/o Late Suneswar Gohain.

All the applicants are working as Upper Division Clerk in the Office of the Small Industries Service Institute, Bamunimaidan, Guwahati-781021, under the Small Industry Development Organisation.

. . . Applicants.

By Advocates Mr.M.Chanda, G.N.Chakraborty & S.Nath.

- Versus -

1. The Union of India
Represented by the Secretary
to the Government of India
Ministry of Small Scale Industries
New Delhi.
2. The Development Commissioner
Department of Small Scale Industries
Government of India
Nirman Bhawan
New Delhi - 110 001.
3. The Director
Small Industries Services Institute
Bamunimaidan
Guwahati - 781 021.

. . . . Respondents.

By Mr.A.K.Chaudhuri, Addl.C.G.S.C.

Contd./2

O R D E R

MUKESH KUMAR GUPTA, MEMBER (J):

Eight UDCs working in the office of Small Industries Service Institute (hereinafter referred as SISI), Guwahati, in the present O.A. have challenged the validity of the orders dated 31.10.2003 and 10.12.2003 (Annexure-II & IV) respectively reducing their pay scale from Rs.5500-9000 to Rs.5000-8000, based on DOP&T O.M. dated 18th July, 2001.

2. The facts in brief are as follows:-

a) Based on recommendations made by Vth Central Pay Commission, DOP&T issued Scheme of Assured Career Progression (in short ACP Scheme) vide O.M. dated 9.8.1999, to alleviate the problem of genuine stagnation and hardship faced by the Central Government Civilian Employees due to lack of adequate promotional avenues and decided to grant two financial upgradation on employees of 12 years and 24 years of regular service.

b) Based on aforesaid O.M., vide order dated 15.10.1999, applicants were granted financial upgradation to the scale of Rs.5500-9000 on completion of required number of their regular service. Under the statutory rules in vogue, a UDC is eligible for promotion to the next higher grade of Superintendent, carrying the pay scale of Rs.5500-9000. The post of UDC carried the pay scale of Rs.4000-6000. The respondents issued impugned order dated 31.10.2003, which in turn was based on DOP&T OM dated 18.7.2001, proposing to reduce the applicants pay scale from Rs.5500-9000 to

Rs.5000-8000 and to recover over payments made thereof by stating as follows:-

"Certain distortions were noticed in the scheme for grant of ACP for which the DOPT had been issuing clarifications from time to time. One of the distortions related to the question as to how ACP benefits should be granted in respect of common category post which exist on all India basis like LDC, UDC, Asstt. and Supdts. DOPT vide their O.M. dtd.18th July, 2001 (clarification NO.56) had clarified that in respect of common category of posts like UDCs, Asstts. & Supdts, the hierarchies that existed on All India basis should be taken into account and not the hierarchies which exist in a particular office for the purpose of granting ACP benefit. In Small Industry Development Organisation, UDCs had been granted ACP benefits w.r.t. next higher post of Supdt. in the scale of Rs.5500-9000. In view of the clarification issued by the DOPT, ACP benefit granted to the UDCs of SIDO in the scale of Rs.5500-9000 is required to be reviewed and rectified by granting them ACP benefit with reference to next higher post of Assistant in subordinate offices in Government of India in the scale of pay of Rs.5000-8000 i.e. by taking into account all India hierarchies of such common category posts. The rectification will be effective w.e.f.9.8.1999 or the date from which the concerned employee had been granted actual ACP benefit in the scale of pay of Rs.5500-9000 whichever is later."

Pursuant to the aforesaid communication dated 31.10.2003, a show cause notice dated 12.11.2003 was issued to applicants, proposing to withdraw the financial benefits granted to them. The said impending action was objected. After considering applicants' representations, respondents passed impugned communication dated 10.12.2003 and thereby refixed the applicants' pay in the pay scale of Rs.5000-8000 with reference to the post of Assistant carrying identical scale of pay existing in

Contd./4

non-secretariat organisations. Over payments made to applicants was also ordered to be recovered. The said recovery was stayed by this Tribunal's order dated 17.2.2004.

The applicants contended that in terms of para 7 of Annexure-I appended to DOPT OM dated 9.8.1999, they are entitled to financial upgradation to the "next higher grade in accordance with the existing heirarchy in a cadre/category of posts without creating new posts for the purpose." It is vehemently contended that applicants, UDC, under the statutory rules in vogue are eligible and entitle to promotion to the post of Superintendent carrying the pay scale of Rs.5500-9000. Similarly vide order dated 10th July 2003 some similarly situated officials were granted 2nd financial upgradation in the pay scale of Rs.500-9000 and therefore the respondents action in treating them differently is arbitrary and discriminatory. Under the rules in vogue, applicants become eligible for promotion to the cadre of Superintendent after 10 years of regular service, though the experience required for promotion to the similar designation and status in other Deptt/Ministries, lesser experience is required. Further, the applicants made neither any misrepresentation nor committed any fraud and as such no recovery could be ordered. In support of said contention, Sh.M.Chanda, learned counsel for the the applicants, relied upon 2003 (3) SLJ 401, Ms.Bindu Sehgal -vs- Union of India & Others decided by Hon'ble High

Court of Delhi. Further reliance was placed on ATJ 2003 (3) 93, Kedar Nath Verma - vs - Bihar State Electricity Board decided by Hon'ble Patna High Court as well as 2003 (1) ATJ 393, Bharat Singh and Others -vs- State of Haryana and Others decided by Punjab and Haryana High Court.

On the other hand, the respondents seriously disputed the applicants' claim by stating that based on next hierarchy available in respect of common category of posts of LDC/UDCs on "all India basis," the changeover was made after issuing proper show cause notice. The common category of posts in the administration stream existing in subordinate/field offices of Govt. of India on all India basis are :-

"1. Superintendent	: (Rs.5500-9000/-)
2. Assistant	: (Rs.5000-8000/-)
3. UDC	: (Rs.4000-6000/-)
4. LDC	: (Rs.3050-4590/-)"

Further the subordinate/field offices of Central Govt. may either have all the above posts or only some of the above posts. SISI, Guwahati, a subordinate office, is not having the post of Assistant. Keeping in view the object of instructions issued vide DOP&T O.M. dated 18.7.2001, clarifying vide clarification No.56, it was ensured to grant equal treatment for granting ACP benefits to similarly circumstanced LDCs recruited through common source but deployed in different Departments. The applicants claim benefits for ACP in pay scale of Rs.5500-9000 is not supported by any rule position. The intention of policy laid down by the Govt. is that such

LDCs get uniform benefits of ACP with reference to all India hierarchy of common administrative posts. Further, the applicants never discharged the function attached to the posts of Superintendent.

3. We have heard Sh.M.Chanda, learned counsel for the applicants, as well as Mr.A.K.Chaudhuri, learned Addl. C.G.S.C. for the respondents at length and perused the pleadings carefully.

4. The short question which needs consideration is whether the impugned orders dated 31.10.2003 as well as 10.12.2003 are just, legal and valid. It is undisputed fact that the O.M. dated 9.8.1999 which notifies the Scheme of Assured Career Progression was based on 5th C.P.C. recommendation. As per said Scheme dated 9.8.1999, various pay scales, which are available, were taken note of. The objection behind grant of two financial upgradation had ~~been~~ to elevate hardship in cases of acute stagnation only.

The promotional prospect available under the Rules left untouched. It is undisputed fact that the applicants, UDCs were placed in the pay scale of Rs.4000-6000/-. Under the Rules, in vogue, the next higher post of Superintendent is placed in the pay scale of Rs.5500-9000/-. If we examine the jump in the said pay scale from the various revised pay scales available under Central Civil Services (Revised Pay) ~~scale~~ Rules, 1997 as well as Annexure-II appended to O.M. dated 9.8.1999, it would be seen that two more categories of pay scales i.e. ~~Rs.5000-8000/- and Rs.5500-9000/- carrying pay~~ scale of Rs.4500-7000/- and Rs.5000-8000/-, respectively were in between said posts. It is also undisputed fact that in

various offices there existed a post in between UDC and Superintendent ^{of} on all India basis known as Assistant. If one is allowed to take advantage of the unamended para 7 as unnoticed in Annexure-I appended to O.M. dated 9.8.1999 then it would be tantamount that the person shall be entitled to next financial upgradation based on existing hierarchy in a cadre instead of next higher pay scale available. We find full justification in treating the officials working and deployed in different Departments at par on all India basis, particularly, when the post existing in different Departments varies. The justification offered and as noticed hereinabove as contained in the impugned communication dated 31.10.2003 ^{is} just, valid and satisfies test of reasonableness. The contention of the learned counsel for the applicants that the clarification dated 18.7.2001 cannot be given retrospective effect is devoid of merit as the O.M. dated 9.8.1999 was also administrative in nature. A perusal of the O.M. dated 9.8.1999, particularly, para 11 would show that the Department of Personnel & Training (Establishment-D) was recognised as competent and having jurisdiction to clarify and interpret about the scope and meaning of the said ACP Scheme. No sufficient materials has been brought to our notice to declare the said O.M. dated 18.7.2001 ^{as} contrary to O.M. dated 9.8.1999. Therefore, we are unable to hold that the said clarificatory O.M. dated 18.7.2001 as illegal and void-ab-initio, as contended. Further more, we find from the noted facts ^{that} principles of natural justice were fully complied


with before modifying the pay scale of Rs.5500-9000/- and granting the pay scale of Rs.5000-8000/- in as much as the show cause notices were issued to each of the applicants on 12.11.2003. Therefore, on the said ~~action~~^{fact} also we find no justification in the said contention of the applicants. Going to the next contention raised by the learned counsel for the applicants that the respondents' action in passing the order of recovery is not justified as ~~at~~^{at} no stage the applicants had made misrepresentations or committed fraud and therefore, they cannot be made to suffer. We find justification in the said contention raised by the learned counsel for the applicants as it is not the case of the respondents either that the said pay scale of Rs.5500-9000/- was granted to the applicants based on their misrepresentation or otherwise. Moreover, the Hon'ble Supreme Court in Sahib Ram -vs- State of Haryana and Others, 1995 SCC (L&S) 248 has clearly held that unless and until a person is guilty of making misrepresentation, recovery should not be ordered from the pay and allowances paid to him based on wrong construction of relevant order of the concerned authority. Keeping in view of the aforesaid law, we find justification in this contention of the applicants and accordingly hold that the respondents' action in ordering recovery is not justified.

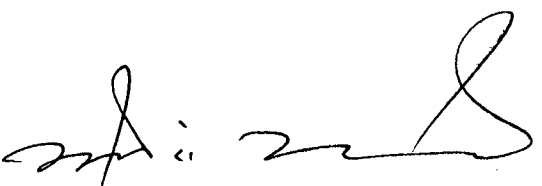
5. As far as the contention raised by the learned counsel for the applicants that their claim is squarely covered by the judgment of the Hon'ble High Court of Delhi in Ms.Bindu Sehgal - vs - Union of Indai & Others is concerned,

we find that the facts of the said case were totally distinguishable than the facts of the present case and therefore, the said judgment has no application in the present case. Merely because some other persons were granted the benefits clearly cannot be a ground of repeating the same mistake in favour of the applicants as one wrong cannot be justified for issuing direction to repeat the same mistake.

6. In the light discretion made hereinabove, the present application is partly allowed. The orders dated 31.10.2003 as well as 10.12.2003 are quashed and set aside to the extent which ordered recovery of over payment made to the applicants in the pay scale of Rs.5500-9000/-. So far the validity of other portion of the said order^o is concerned, the same is upheld. Similarly, we find no justification in quashing the DOP&T O.M. dated 18.7.2001. It is also held that the applicants will not be entitled to continue in the pay scale of Rs.5500-9000/-.

No costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER


(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

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B F E R

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(Signature)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI**

O. A. No. 26 / 2004

Sri Ananta Ram Baishya & Others.

... Applicants

-Versus-

Union of India & Others

... Respondents.

Lists of dates and synopsis of the case

Date

Synopsis of particulars in the application

- 09.08.1999-** The Govt. of India, Department of Personnel and Training (DOPT) launched one scheme of "Assured Career Progression Scheme (ACP)" for those Central Government civilian employees avenues. In terms of the Scheme; the Group B, C and D employees are entitled to two financial upgradations on completion of 12 years and 24 years of regular service irrespective of availability of posts or vacancies. (Annexure-I)
- 15.10.1999-** Applicants were granted financial upgradations to the scale of Rs.5500-9000/- under the ACP Scheme on completion of required years of their regular service. The ACP Scheme provides that financial upgradation would be granted to the next higher cadre which exists as per the hierarchy in the department. The applicants were working as UDC and as per the existing hierarchy in the respondent department the next higher grade is Superintendent whose pay scale is Rs.5500-9000/-. As such the applicants were granted the scale of Rs.5500-9000/- under the ACP Scheme after observing all procedural formalities. They were granted the scale on different dates between 09.08.1999 to 09.10.2000.
-

- 01.07.2003- Respondents granted financial upgradation to the scale of Rs.5500-9000/- under ACPS to some other UDC/Stenos. (Annexure-V)
- 31.10.2003- The respondents issued one impugned order at the instance of an order dated 18.07.2001 of the DOPT seeking to reduce the scale of the applicants from Rs.5500-9000/- to Rs.5000-8000/- and recover the overpayments thereof on the plea that as per the hierarchy in All India pattern the next higher grade of UDC is Assistant in the scale of Rs.5000-8000/- and hence the applicants ought to have been granted the scale of Assistant and not Superintendent which is next above. It is stated that the respondents granted the scale of Rs.5500-9000/- to some other UDC/Steno on 01.07.2001 even after the DOPT's order. (Annexure-II)
- 12.11.2003- Show-Cause notices were issued to the applicants asking them to show cause as to why in the light of DOPT instructions the ACP benefit already granted to them in the scale of Rs.5500-9000/- should not be withdrawn and they be granted ACP benefit in the scale of Rs.5000-8000/- with reference to the post of Assistant keeping in view the All India hierarchy for the common category posts.
- 18.11.2003- Applicants replied to the Show-Cause notices explaining interalia that there is no post of Assistant in the scale of Rs.5000-8000/- in the existing hierarchy in the respondent department and as such the respondents cannot create an imaginary post of Assistant in the respondent department and further prayed for continuation of their scale of Rs.5500-9000/- granted to them under the ACP Scheme. (Annexure-III)
- 10.12.2003- The applicants were informed vide one impugned letter dated 10.12.2003 that their prayer cannot be acceded to and the respondents adhered to their earlier decision arbitrarily which is contrary to the provisions of the ACP Scheme as stated in this application and not sustainable in law. (Annexure-IV)

Hence this application before the Hon'ble Tribunal.

PRAYERS

Under the facts and circumstances stated in the application the applicants most respectfully pray that the Hon'ble Tribunal be pleased to grant the following reliefs; -

1. That the impugned order No.60015/16/2003-A (NG) dated 31.10.2003 (Annexure-II) and letter No.A-60015/16/2003-A (NG) dated 10.12.2003 (Annexure-IV.)
2. That it may be declared that the applicants are entitled to get the scale of Rs.5500-9000/- granted to them under the ACP Scheme.
3. That the respondents be directed to allow the applicants to continue in the scale of Rs.5500-9000/- already granted to them and no recovery of over payment in any way be made from them.
4. Costs of the application.
5. Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

Interim order prayed for.

During pendency of this application, the Hon'ble Tribunal be pleased to grant the following relief: -

1. That the operation of the impugned orders mentioned in para 8.1 hereinabove may be stayed till the disposal of this application.
 2. That the respondents be directed that the pendency of this application shall not be a bar to the respondents for considering the representations of the applicants.
-

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Filed by the Applicant's
Mr. Sanjit Choudhury
Advocate
on 13.02.2004.

Title of the case , : O. A. No 26 /2004

Sri Ananta Ram Baishya & Others : Applicants.

- Versus -

Union of India & Others : Respondents.

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Filed by

Sanjit Choudhury

Advocate

Date: 13.02.2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative
Tribunals Act, 1985)

O. A. No. 26 /2004

BETWEEN

- 1. Shri Ananta Ram Baishya.
S/o- Late Ganeshwar Baishya.
- 2. Shri Kandarpa Choudhury.
S/O- Late Rajen Choudhury.
- 3. Shri Bhabananda Sharma.
S/o- Late Tarinikanta Sharma.
- 4. Shri Kameshwar Kalita.
S/O- Late Chabin Chandra Kalita.
- 5. Shri Arun Chandra Das.
S/o- Late S. R. Das.
- 6. Shri Prafulla Kumar Choudhury.
S/o- Late B. K. Choudhury.
- 7. Mrs. Jayanta Devi.
D/o- Late Angangtal Singha.
- 8. Mrs. Lily Gohain Das.
D/o- Late Suneswar Gohain.

Applicants.

(All the applicants are working as Upper Division Clerk in the Office of the Small Industries Service Institute, Bamunimaidan, Guwahati-781021, under the Small Industry Development Organisation.)

Ananta Ram Baishya

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India, Ministry of Small Scale Industries,
New Delhi.
2. The Development Commissioner,
Department of Small Scale Industries,
Government of India,
Nirman Bhavan,
New Delhi- 110 011.
3. The Director,
Small Industries Services Institute,
Bamunimaidan,
Guwahati- 781 021.

...Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the impugned order issued under No.60015/16/2003-A (NG) dated 31.10.2003 (Annexure-II) from the Office of the Respondent No.2 with the direction that the benefit of the scale of Rs.5500-9000/- which was granted to the applicants under the Assured Career Progression (ACP) Scheme of the Govt. of India be reviewed and rectified and the applicants be granted the lower scale of Rs. 5000-8000/- instead of Rs. 5500-9000/- under the ACP Scheme and their pay be refixed accordingly with the further direction to recover the over payments so made to the

Ananta Ram Baisya

applicants in an arbitrary manner and also against the subsequent impugned letter No.A-60015/16/2003-A(NG) dated 10.12.2003 (Annexure-IV) issued by the respondents.

2. Jurisdiction of the Tribunal

The applicants declare that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicants further declare that this application is filed within the limitation prescribed under Section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the Case

4.1 That the applicants are citizens of India and as such they are entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicants pray for permission to move this application jointly in a single application under the provisions of Section 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules 1985 as the interests of the applicants and the reliefs sought for in this application by the applicants are common.

4.3 That the applicants are all working as Upper Division Clerk (UDC) in the office of the Small Industries Institute (SISI), Bamunimaidan, Guwahati-781021 under

Ananta Ram Barua

the Small Industry Development Organisation (SIDO), Government of India, Ministry of Small Scale Industries. They joined under the respondent department on different dates.

- 4.4 That the Fifth Central Pay Commission recommended interalia for an Assured Career Progression (ACP) Scheme as a "Safety net" for those Central Government civilian employees who are stagnated due to lack of adequate promotional avenues. Pursuant to the recommendation of the CPC, the Govt. of India, vide its Office Memorandum No. 35034/1/97-Estt(D) dated 09.08.1999 issued by the Department of Personnel and Training (DOPT) launched an ACP Scheme with certain modifications for the Central Government civilian employees to mitigate hardships in cases of acute or in an isolated post. As per the said ACP Scheme, the Group 'B', 'C' and 'D' employees are entitled to be granted two financial upgradations on completion of 12 years and 24 years of regular service irrespective of availability of posts/vacancies. The detailed scheme and the conditions thereto have been circulated by the DOPT vide its said O.M dated 09.08.1999.

(Copy of the ACP Scheme is annexed hereto as Annexure-I.)

- 4.5 That pursuant to the ACP Scheme framed by the Govt. of India, DOPT, the respondent department implemented the scheme for the relevant categories of their employees. Accordingly the applicants in this application were

Ananta Ram Baidya

granted the benefit of the ACP Scheme according to their length of regular service and were granted financial upgradation to the scale of Rs.5500-9000/- from the respective dates of their completion of 12 years/24 years of regular service. Their dates and mode of financial upgradation etc. as were granted by the respondents under the ACP Scheme are shown hereunder:-

Name	Date of financial up gradation	Mode of upgradation granted	Scale granted after up gradation
1) Shri Ananta Ram Baishya. (59 years)	09.08.1999	2nd upgradation	5500-9000/-
2) Shri Kandarpa Choudhury.(52 years)	03.04.2000	2nd upgradation	5500-9000/-
3) Shri Bhabananda Sharma. (49 years)	09.08.1999	2nd upgradation	5500-9000/-
4) Shri Kamashwar Kalita. (51 years)	15.10.1999	2nd upgradation	-Do-
5) Shri Arun Ch. Das. (57 years)	09.08.1999	2nd upgradation	-Do-
6) Shri Prafulla Kr. Choudhury. (52 years)	09.10.2000	2nd upgradation	-Do-
7) Mrs. Jayani Devi. (57 years)	09.10.2000	1st upgradation	-Do-
8) Mrs. Lily Gohain Das. (60 years)	09.08.1999	2nd upgradation.	-Do-

4.6 That the financial upgradation to the scale of Rs. 5500-9000/- was granted to the applicants in terms of

Ananta Ram Baishya

para 7 under the "conditions for grant of benefits under ACP Scheme" which provides that-

"7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of Posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (Standard/Common) pay scales-----."

It is relevant to mention here that in the respondent department the hierarchical grades are defined and as per the existing hierarchy, the immediate higher grade of UDC is Superintendent and the scale of Superintendent is Rs. 5500-9000/-. As such the scale of Rs. 5500-9000/- was granted to the applicants under the ACP Scheme since they are working as UDC and their immediate higher grade is Superintendent. It would be evident from the Recruitment Rule for the post of Superintendent that, the next, avenue for UDC for promotion is the post of Superintendent.

A copy of the Recruitment rule dated 11th December, 2002 is enclosed as Annexure- 1A.

- 4.7 That subsequently, acting on a clarification made by the DOPT, the Respondent No.2 issued the impugned order No.60015/16/2003-A (NG) dated 31.10.2003 contending that since the All India hierarchy for common category of posts is in the order of LDC-UDC-Assistant-

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Superintendent, so the applicants who are UDCs ought to have been given the scale of their next higher grade i.e. Assistant and not Superintendent by way of financial upgradation under the Scheme and as such they ought to have been granted the scale of Rs.5000-8000/- only which is the scale of Assistant. Accordingly under the said order, it was directed to review and rectify the scale granted to the applicants and grant them the upgradation to the lower scale of Rs.5000-8000/- under the ACPS instead of Rs.5500-9000/- and recover the over payments made to them after refixing their pay.

(Copy of the impugned order dated 31.10.2003 is annexed hereto as Annexure-II.)

4.8 That your applicants beg to state that in the respondent department there is no post of Assistant in the scale of Rs.5000-8000/- and as per the defined existing hierarchy, the grades are LDC-UDC-Superintendent only and as such the applicants are entitled to the benefit of the scale of Superintendent (Rs.5500-9000/-) as per the hierarchy as clearly spelt in para-7 of the conditions for ACPS stated in para 4.6 above.

4.9 That thereafter, "Show Cause notices" were issued to the applicants vide letter dated 12.11.2003 calling upon the applicants to show cause as to why in the light of DOPT instructions the ACP benefit already granted to them in the scale of Rs.5000-8000/- i.e.

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with reference to the post of Assistant keeping in view the All India hierarchy for the common category posts.

4.10 That the applicants thereafter submitted representations/reply against the Show-Cause Notices explaining that there is no post of Assistant in the scale of Rs.5000-8000/- in existing hierarchy in the SIDO and the immediate higher grade of UDC is Superintendent only whose scale is Rs.5500-9000/- in SIDO. As such the applicants are entitled to the benefit of the scale of Rs.5500-9000/- granted to them under the ACP Scheme and there is no question of reviewing and reducing their benefit already granted and prayed that they be allowed to retain the scale of Rs.5500-9000/- but the same has not been considered by the Respondents. One of the representations submitted by the applicant No.8, Mrs. Lily Gohain Das on 18.11.2003 is annexed herewith.

(Copy of the representation dated 18.11.2003 is annexed hereto as Annexure-III.)

4.11 That in reply to their representation aforesaid, the applicants were intimated vide one impugned letter No.A-60015/16/2003-A (NG) dated 10.12.2003 issued from the office of the Respondent No.2 that the request of the applicants for retaining their scale of Rs.5500-9000/- cannot be acceded to for the reasons stated in the preceding paragraphs. It has further been directed to refix the pay of the applicants in the scale of

Ananta Ram Baisya

Rs.5000-8000/- and recover the over payments made to them, adhering to their earlier decision as usual.

(Copy of the impugned letter dated 10.12.2003 is annexed hereto as Annexure-IV.)

4.12 That the applicants beg to state that while the prayer of the applicants for retention of their benefit of the scale of Rs.5500-9000/- granted to them under the ACP Scheme have been rejected by the respondents on the plea of DOPT letter dated 18.07.2001 surprisingly, the same benefit of the scale of Rs.5500-9000/- have been granted to some UDCs/Stenographers vide order No.A.32016/2001-Estt dated 01.07.2003 i.e. even after the issuance of the said DOPT letter dated 18.07.2001, which is discriminatory.

(Copy of the order dated 01.07.2003 is annexed hereto as Annexure-V.)

4.13 That the applicants most respectfully beg to submit that it has been clearly spelt out in para 7 of the "Conditions for grant of benefits under the ACP Scheme" that the benefit under the ACP Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts. As per the existing hierarchy in SIDO the next higher grade of UDC is Superintendent whose scale is Rs.5500-9000/- but the respondents decided to create an imaginary new post of Assistant in the scale of Rs.5000-8000/- as the next higher grade of UDC in SIDO to their advantage which does not exist at

Ananta Ram Banskya

all in SIDO and as such it is contrary to the provision of the ACP Scheme. Further, under the same para-7 of the Scheme it has been spelt out that the standard/common pay scales would be granted under the said scheme in case of isolated posts where there is no defined hierarchical grades which is not the case in SIDO where there is defined hierarchical grades. As such the contention of the respondents to grant the standard/common scale of Rs.5000-8000/- to the applicants on the basis of an imaginary new post of Assistant is not sustainable in law and contrary to the provisions of the ACP Scheme.

4.14 That it is the settled position of law that Public order issued cannot be twisted in any other way to the advantage of the Government as laid down by the Apex Court. As such the benefit of the scale of Rs.5500-9000/- once granted to the applicants under the ACP Scheme cannot be withdrawn/twisted now, more so when it was granted to them after observing all the procedures established by law and not occasioned by any fraud or fault on the part of the applicants. Hence the proposed recovery of so called over payment is contrary to the settled law.

4.15 That it is stated that the applicants in the SIDO are discharging the duties and responsibilities of Superintendent which is higher than that of Assistant and they cannot be equated with the Assistants. As such equal pay cannot be given for unequal works which is

Ananta Ram Baidya

often contended by the respondents while entertaining the claims for equal pay for equal works. Such double standard is bad in law and an unfair labour practice.

4.16 That under the facts and circumstances stated above, the directions of the respondents for reducing the scale of the applicants from Rs.5500-9000/- to Rs.5000-8000/- granted under the ACP Scheme and recovery thereof is arbitrary, malafide, unjust, unfair, contrary to the provisions of the ACP Scheme and violative of the principle of natural justice. As such finding no other alternative the applicants are approaching this Hon'ble Tribunal for protection of their legitimate rights and interests and it is a fit case for the Hon'ble Tribunal to interfere with, directing the respondents to continue the benefit of the scale of Rs.5500-9000/- granted to the applicants under the ACP Scheme and not to make any recovery etc.

4.17 That it is stated that Original memorandum issued on 09.08.1999 by the DOPT for granting Assured Career Progression benefit under the Scheme and thereafter the said scheme was made applicable in all Central Govt. Offices and accordingly, benefit was granted to the Govt. employees but only on 18th July, 2001 a clarification was given by the DOPT that in respect of common category of post like UDCs, Assistants and Superintendents, the hierarchies that existed on All India basis should be taken into account and not

Ananta Ram Bhatnagar

hierarchies which exists in a particular office for the purpose of granting ACP benefit. It is further stated in the impugned letter dated 31.10.2003 that in all S.I.D.O, UDCs has been granted ACP benefit with reference to the next higher post of Superintendent in the scale of Rs. 5500-9000/- but in view of the clarification issued by the DOPT on 18th July, 2001 UDCs of S.I.D.O are entitled to ACP benefit with reference to the post of Assistant is subordinate officers in Govt. of India in the scale of pay Rs. 5000-8000/- and the rectification will be effective w.e.f 09.08.1999 or the date on which concerned employee received the benefit of ACP Scheme.

Therefore a mere perusal of clarification it appears that the same is after thought and the action of the respondents is not in conformity with the original Office Memorandum dated 09.08.1999. It is a settled position of law that a public order once issued the same cannot be interfered in any manner subsequently to deny particular benefit to the particular class of people which was acquired by them following the public order passed in this regard and on that score alone the impugned orders denying the benefit of higher revised scale of Rs.5500-9000/- are liable to be set aside and quashed.

4.18 That the subsequent clarification given by the DOPT on 18th July, 2001 i.e. clarification No.56 indicated in the impugned order dated 31.10.2003 is contrary to the

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Memorandum dated 09.08.1999 i.e. the original Scheme of ACP issued by the Govt. of India and on that score alone the impugned order is liable to be set aside and quashed.

4.19 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

- 5.1 For that, the applicants were granted the financial upgradations to the scale of Rs.5500-9000/- under the ACP Scheme after observing all procedures established by law.
- 5.2 For that, the applicants acquired valuable rights for financial upgradation under the ACP Scheme since they completed the required years of regular service as envisaged under the Scheme.
- 5.3 For that, as per the existing hierarchy in the respondent department (SIDO), the next higher cadre of UDC is Superintendent and the scale of Superintendent is Rs.5500-9000/-. The applicants being UDCs are therefore entitled to the scale of Rs.5500-9000/- on their financial upgradation under the ACP Scheme.
- 5.4 For that, there is no post of Assistant in the scale of Rs.5000-8000/- between the UDC and the Superintendent in the respondent department and as such the respondents cannot create an imaginary post of

Ananta Ram Bishnoi

Assistant in the scale of Rs.5000-8000/- for the sake of depriving the applicants of the benefit of the scale of Rs.5500-9000/- which is contrary to the provisions of ACP Scheme.

- 5.5 For that, the grant of standard/common scale of Rs.5000-8000/- is not applicable in case of the applicants since the same is applicable only in case of isolated posts where there is no defined hierarchy of Posts. But in the respondent department, there is defined hierarchy of post i.e. UDC-Superintendent and not isolated one and as such the applicants are entitled to the scale of Rs.5500-9000/- only in accordance with the ACP Scheme.
- 5.6 For that, it is the settled position of law that public order once issued cannot be touched/twisted to the advantage of the Government. As such the scale of Rs.5500-9000/- once granted to the applicants cannot be twisted now.
- 5.7 For that the applicants are now discharging the duties and responsibilities of Superintendent which are higher than that of Assistants and they cannot be equated with the Assistants and as such there cannot be equal pay for equal works.
- 5.8 For that the direction of the respondents to reduce/refix the scale of the applicants is arbitrary, malafide, unjust, unfair and contrary to the provisions

Ananta Ram Baisya

of the ACP Scheme, which if implemented, would cause irreparable injury to the applicants and deprive them of their legitimate benefit.

5.9 For that the action of the respondents is violative of the principles of natural justice and also the Article 14 and 16 of the Constitution of India.

5.10 For that due to non-consideration of their representations the applicants would suffer heavy financial loss and they failed to get justice for their prayer.

5.11 For that the applicants did not committed any fraud while granting the benefit of higher revised scale of Rs.5500-9000/- as Respondents are not entitled not to make any recovery, which will otherwise cause great hardship to the applicants.

5.12 For that, the subsequent clarification issued by the DOPT on 18th July, 2001 i.e. clarification No.56 is contrary to the original Memorandum/Scheme dated 09.08.1999 issued by the Govt. of India for granting benefit of ACP as such impugned order is liable to be set aside and quashed.

6. Details of remedies exhausted.

That the applicants state that they have exhausted all the remedies available to them and there is no other

Arunta Ram Borsky

alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicants further declare that they had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicants humbly pray that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1 That the impugned order No.60015/16/2003-A (NG) dated 31.10.2003 (Annexure-II) and letter No.A-60015/16/2003-A (NG) dated 10.12.2003 (Annexure-IV.) be set aside and quashed

8.2 That the Hon'ble Tribunal be pleased to declare that the applicants are entitled to retain the scale of Rs.5500-9000/- granted to them under the ACP Scheme.

Ananta Ram Banshi

- 8.3 That the Hon'ble Court be pleased to declare that the subsequent clarification of the O.M dated 09.08.1999 issued under DOPT O.M dated 18th July, 2001 is contrary to the Memorandum dated 09.08.1999 as such the said is void-ab-initio.
- 8.4 That the respondents be directed to allow the applicants to continue in the scale of Rs.5500-9000/- already granted to them and no recovery of over payment in any way be made from them.
- 8.5 Costs of the application.
- 8.6 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.
9. Interim order prayed for.

During pendency of this application, the Hon'ble Tribunal be pleased to grant the following relief: -

- 9.1 That the operation of the impugned orders No. 60015/16/2003-A (NG) (Annexure-II) and letter No.A-60015/16/2003-A (NG) dated 10.12.2003 (Annexure-IV) hereinabove be stayed till the disposal of this application.

Ananta Ram Bishya

9.2 That the respondents be directed that the pendency of this application shall not be a bar to the respondents for considering the representations of the applicants.

10.
This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	:	JG 387497
ii) Date of Issue	:	31.12.03.
iii) Issued from	:	G.P.O, Gussahab.
iv) Payable at	:	G.P.O, Gussahab.

12. List of enclosures

As given in the index.

Ananta Ram Baisya

VERIFICATION

I, Shri Ananta Ram Baishya, S/o Late Ganeshwar Baishya, aged about 59 years, working as Upper Division Clerk in the Office of the Small Industries Service Institute, Bamunimaidan, Guwahati- 781021 do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 13th day of February, 2004.

Ananta Ram Baishya

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ANNEXURE - I

MOST IMMEDIATE

No.35034/1/97-Estt(D)
Government of India
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)

North Block, New Delhi 110001
August 9, 1999

OFFICE MEMORANDUM

Subject:- THE ASSURED CAREER PROGRESSION SCHEME FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES.

The Fifth Central Pay Commission in its Report has made certain recommendations relating to the Assured Career Progression (ACP) Scheme for the Central Government civilian employees in all Ministries/Departments. The ACP Scheme needs to be viewed as a 'Safety Net' to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. Accordingly, after careful consideration it has been decided by the Government to introduce the ACP Scheme recommended by the Fifth Central Pay Commission with certain *modifications* as indicated hereunder:-

2. GROUP 'A' CENTRAL SERVICES

2.1 In respect of Group 'A' Central services (Technical/Non-Technical), no financial upgradation under the Scheme is being proposed for the reason that promotion in their case must be earned. Hence, it has been decided that there shall be no benefits under the ACP Scheme for Group 'A' Central services (Technical/Non-Technical). Cadre Controlling Authorities in their case would, however, continue to improve the promotion prospects in organisations/cadres on functional grounds by way of organisational study, cadre review, etc. as per prescribed norms.

3. GROUP 'B', 'C' AND 'D' SERVICES/POSTS AND ISOLATED

POSTS IN GROUP 'A', 'B', 'C' AND 'D' CATEGORIES

3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September

Approved
Secretary
13.2.09

No. 35034/1/97-Estt(D) (D) 13.2.09

(19)

11. 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM) under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-D) of regular service respectively. Isolated posts in Group 'A', 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.

3.2 'Regular Service' for the purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Service Rules.

4. Introduction of the ACP Scheme should, however, in no case affect the normal (regular) promotional avenues available on the basis of vacancies. Attempts needed to improve promotion prospects in organisations/cadres on functional grounds by way of organisational study, cadre reviews, etc as per prescribed norms should not be given up on the ground that the ACP Scheme has been introduced.

5. Vacancy based regular promotions, as distinct from financial upgradation under the ACP Scheme, shall continue to be granted after due screening by a regular Departmental Promotion Committee as per relevant rules/guidelines.

6. SCREENING COMMITTEE

6.1 A departmental Screening Committee shall be constituted for the purpose of processing the cases for grant of benefits under the ACP Scheme.

6.2 The composition of the Screening Committee shall be the same as that of the DPC prescribed under the relevant Recruitment/Service Rules for regular promotion to the higher grade to which financial upgradation is to be granted. However, in cases where DPC as per the prescribed rules is headed by the Chairman/Member of the UPSC, the Screening Committee under the ACP Scheme shall, instead, be headed by the Secretary or an officer of equivalent rank of the concerned Ministry/Department. In respect of isolated posts, the composition of the Screening Committee (with modification as noted above, if required) shall be the same as that of the DPC for promotion to analogous grade in that Ministry/Department.

6.3 In order to prevent operation of the ACP Scheme from resulting into undue strain on the administrative machinery, the Screening Committee shall follow a time-schedule and meet twice in a financial year - preferably in the first week of January and July for advance processing of the cases. Accordingly, cases maturing during the first-half (April-September) of a particular financial year for grant of benefits under the ACP Scheme shall be taken up for consideration by the Screening Committee meeting in the first week of January of the previous financial year. Similarly, the Screening Committee meeting in the first week of July of any financial year shall process the cases that would be maturing during the second-half (October-March) of the same financial year. For example, the Screening Committee meeting in the first week of January, 1999 would process the cases that would attain maturity during the period April 1, 1999 to September 30, 1999 and the Screening Committee meeting in the first week of July, 1999 would process the

Necessary amendments will have to be made

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cases that would mature during the period October 1, 1999 to March 31, 2000.

6.4 To make the Scheme operational, the Cadre Controlling Authorities shall constitute the first Screening Committee of the current financial year within a month from the date of issue of these instructions to consider the cases that have already matured or would be maturing upto March 31, 2000 for grant of benefits under the ACP Scheme. The next Screening Committee shall be constituted as per the time-schedule suggested above.

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7. Ministries/Departments are advised to explore the possibility of effecting savings so as to minimise the additional financial commitment that introduction of the ACP Scheme may entail.

8. The ACP Scheme shall become operational from the date of issue of this Office Memorandum.

9. In so far as persons serving in the Indian Audit and Accounts Departments are concerned, these orders issue after consultation with the Comptroller and Auditor General of India.

10. The Fifth Central Pay Commission in paragraph 52.15 of its Report has also separately recommended a "Dynamic Assured Career Progression Mechanism" for different streams of doctors. It has been decided that the said recommendation may be considered separately by the administrative Ministry concerned in consultation with the Department of Personnel and Training and the Department of Expenditure.

11. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the ACP Scheme shall be given by the Department of Personnel and Training (Establishment-I).

12. All Ministries/Departments may give wide circulation to these instructions for guidance of all concerned and also take immediate steps to implement the Scheme keeping in view the ground situation obtaining in services/cadres/ posts within their administrative jurisdiction;

13. Hindi version would follow.

(K.K. JHA)
Director
(Establishment)

ANNEXURE-I

CONDITIONS FOR GRANT OF BENEFITS

UNDER THE ACP SCHEME

1. The ACP Scheme envisages merely placement in the higher pay-scale/grant of financial benefits (through financial upgradation) only to the Government servant concerned on personal

Necessary action with regard to abatement

DEPS

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(6)

basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose;

2. The highest pay-scale upto which the financial upgradation under the Scheme shall be available will be Rs. 14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy based promotions;

3. The financial benefits under the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfillment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;

5.1 Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including in-situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP Scheme shall accrue to him;

5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the grade in which an employee was appointed as a direct recruit;

6. Fulfillment of normal promotion norms (bench-mark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial upgradations, performance of such duties as are entrusted to the employees together with retention of old designations, financial upgradations as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;

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7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (standard/common) pay-scales as indicated in Annexure-II which is in keeping with

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Part A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as indicated in Annexure-II, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position. As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme;

9. On upgradation under the ACP Scheme, pay of an employee shall be fixed under the provisions of FR 22 (I) a (1) subject to a minimum financial benefit of Rs.100/- as per the Department of Personnel and Training Office Memorandum No.1/6/97-Pay.I dated July 5, 1999. The financial benefit allowed under the ACP Scheme shall be final and no pay-fixation benefit shall accrue at the time of regular promotion i.e. posting against a functional post in the higher grade;

10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. In case he refuses to accept the higher post on regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refuses regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+2+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade;

11. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules, 1965 and instructions thereunder;

12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher

MEMBER

ASST. DIR (ADM)

MEMBER

Not correct... ACP... to...

pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;

13. Existing time-bound promotion schemes, including in-situ promotion scheme, in various Ministries/Departments may, as per choice, continue to be operational for the concerned categories of employees. However, these schemes, shall not run concurrently with the ACP Scheme. The Administrative Ministry/Departments-- not the employees -- shall have the option in the matter to choose between the two schemes, i.e. existing time-bound promotion scheme or the ACP Scheme, for various categories of employees. However, in case of switch-over from the existing time-bound promotion scheme to the ACP Scheme, all stipulations (viz. for promotion, redistribution of posts, upgradation involving higher functional duties, etc) made under the former (existing) scheme would cease to be operative. The ACP Scheme shall have to be adopted in its totality;

14. In case of an employee declared surplus in his/her organisation and in case of transfers including unilateral transfer on request, the regular service rendered by him/her in the previous organisation shall be counted along with his/her regular service in his/her new organisation for the purpose of giving financial upgradation under the Scheme; and

15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial upgradation under the scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first upgradation under the scheme) shall be given at the subsequent stage (second) of financial upgradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme.

(K.K. JHA)
Director
(Establishment)

Handwritten notes and signatures at the bottom of the page, including "New copy attached" and "copy to be submitted".

STANDARD/Common PAY SCALES

As per Part-A of the First Schedule Annexed to the Ministry of Finance

(Department of Expenditure) Gazette Notification dated September 30, 1997

REFERENCE PARA 7 OF ANNEXURE I OF THIS OFFICE MEMORANDUM

S.No.		Revised pay scales (Rs)
1.	S-1	2550-55-2660-60-3200
2.	S-2	2610-60-3150-65-3540
3.	S-3	2650-65-3300-70-4000
4.	S-4	2750-70-3800-75-4400
5.	S-5	3050-75-3950-80-4590
6.	S-6	3200-85-4900
7.	S-7	4000-100-6000 ✓
8.	S-8	4500-125-7000
9.	S-9	5000-150-8000
10.	S-10	5500-175-9000 ✓
11.	S-12	6500-200-10500
12.	S-13	7450-225-11500
13.	S-14	7500-250-12000
14.	S-15	8000-275-13500
15.	S-19	10000-325-15200
16.	S-21	12000-375-16500
17.	S-23	12000-375-18000
18.	S-24	14300-400-18300

shall be fixed under the provisions of FR 22 (i) (a) (1) subject to a minimum benefit of Rs. 100.

Doubt 53.— If for promotion on regular basis, an employee has to possess a higher/additional qualification, will it be necessary to insist on possession of these qualifications even while considering grant of financial upgradation under the ACPS?

Clarification.— In terms of Condition No. 6 of Annexure-I to DoP&T, O.M., dated 9-8-1999, only those employees who fulfil all promotional norms are eligible to be considered for benefit under ACPS. Therefore, various stipulations and conditions specified in the Recruitment Rules for promotion to the next higher grade, including the higher/additional educational qualification, if prescribed, would need to be met even for consideration under ACPS.

Doubt 54.— Whether EOL without medical certificate will count for computing regular service under ACPS?

Clarification.— Unless the counting of such leave or any other kind of leave is specifically excluded under relevant rules governing promotions for being counted towards regular service for promotion (e.g., in some cases of promotions under Flexible Complementing Scheme), all kinds of leave including EOL without medical grounds normally counts towards regular service for promotion. EOL without medical grounds will be similarly treated while computing regular service for purposes of grant of financial upgradation under ACPS.

Doubt 55.— A cadre has been restructured with proper sanction but the Recruitment Rules for the restructured grades are still to be framed. Whether the individuals be granted financial upgradation in the existing hierarchical order or in the revised hierarchical order introduced subsequently?

Clarification.— Financial upgradation under ACP Scheme is to be allowed under the hierarchy existing as on 9-8-1999 or at the time one becomes eligible, whichever is later. Since a new hierarchy has come into being, financial upgradations may be allowed only in the restructured hierarchy. If model Recruitment Rules exist for such restructured grades, then Screening Committee may review cases on the basis of such model Rules. Otherwise, ACPS may be allowed after finalization of Recruitment Rules but the benefit may be allowed from the due date.

Doubt 56.— The Fifth Central Pay Commission has identified a number of common category posts spread across various Ministries/Departments as well as in Offices outside the Secretariat as discussed in Chapter 55 of its report and also in other Chapters and has made recommendations for adoption of uniform grade/cadre structure subject to functional needs of an individual organization. In a large organization, all the hierarchical levels as per uniform

cadre/grade structure may be created while in a smaller office, a few levels of the uniform hierarchical structure may not be introduced keeping in view the functional needs of the organization. Consequently, while in a larger organization/cadre, promotions are allowed in consecutive hierarchical grades, in a smaller cadre, promotions involve substantial jumps though in such cases, the requirement of period of regular service in the feeder grade as specified in the Recruitment Rules may be longer. Since, under ACPS, the requirement of longer regular service in the feeder grade for promotion to such higher levels is not reckoned while considering financial upgradations; it results in a situation where persons belonging to common category and recruited at same time in same entry grades are entitled to financial upgradations in vastly different grades under ACPS. Is it not anomalous?

Clarification.— Financial upgradations under ACPS are to be allowed in the 'existing hierarchy'. However in reply to point of Doubt No. 2, it has already been clarified that existing hierarchy in relation to a cadre would mean the restructured grades recommended by the Fifth Central Pay Commission. Further, as an example, in reply to point of Doubt No. 19, it has been stated that in order to secure upward mobility of library staff under the ACPS, it has been decided to adopt the pay structure as notified by the Ministry of Finance vide O.M., dated 24-7-1990 (Sl. No. 190 of Swamy's Annual, 1990) subject to the terms and conditions specified by them. Therefore, the ACPS already envisages that in respect of common category posts, if the Government has accepted a uniform standard hierarchical structure, then 'existing hierarchy' in relation to such common categories shall be the standard hierarchy as approved by the Government and not the hierarchy in a particular office, which, for functional considerations may not have all the grades. If such financial upgradations are allowed keeping purely such local hierarchy in view, it will result in vast disparities in entitlements under ACPS for identical category of posts which cannot be justified. It has the potential of generating huge disquiet and unrest, which will not be in public interest.

If, however, the Fifth Central Pay Commission has recommended a specific pay structure/ACP grades for a particular category in an organization, which may seemingly belong to a common category, then the mobility under ACPS in respect of such specific posts in that organization shall be through the grade structure/ACPS grades recommended for that organization, if the same has been approved by the Government, and not the standard grade/hierarchical structure recommended for such common category.

Doubt 57.— Whether an employee who has not been recommended for grant of financial upgradation under ACPS by a

MINISTRY OF SMALL SCALE INDUSTRIES
(Office of the Development Commissioner Small Scale Industries)

New Delhi, the 11th December, 2002

G.S.R. 518.—In exercise of the powers conferred by the proviso to article 309 of the Constitution and in supersession of the Small Industries Development Organisation (Group 'C' and 'D' Posts) Recruitment Rules, 2000, except as respects things done or omitted to be done before such supersession, the President hereby makes the following rules regulating the method of recruitment to certain Group 'C' and 'D' posts in the Ministry of Small Scale Industries, the Small Industries Development Organisation, namely:—

1. **Short title and commencement.**—(1) These rules may be called the Ministry of Small Scale Industries, the Small Industries Development Organisation, Group 'C' and Group 'D' Posts Recruitment Rules, 2002.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. **Application.**—These rules shall apply to the posts specified in column 1 of the Schedule annexed to these rules.
3. **Number of posts, classification and scale of pay.**—The number of posts, their classification and the scale of pay attached thereto shall be as specified in columns 2 to 4 of the said Schedule.
4. **Method of recruitment, age limit, qualifications, etc.**—The method of recruitment, age limit, qualifications and other matters relating thereto shall be as specified in columns 5 to 14 of the aforesaid Schedule.
5. **Liability of persons appointed as peons to undergo training as Home Guards.**—Notwithstanding anything contained in these rules, every person appointed as a peon under these rules shall undergo training as a Home Guard for a period of three years, except those who are physically handicapped and unable to undergo such training:
Provided that the Commandant General, Home Guards, may, having regard to the performance or the standard of training achieved by any person during the period of training, reduce such period to two years for reasons to be recorded in writing.

6. **Disqualification.** - No person,—

- (a) who has entered into or contracted a marriage with a person having a spouse living, or
- (b) who, having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to the said posts:

Provided that the Central Government, may, if satisfied that such marriage is permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing, exempt any person from the operation of this rule.

7. **Power to relax.**—Where the Central Government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, relax, any of the provisions of these rules with respect to any class or category of persons:

8. **Saving.**—Nothing in these rules shall affect, reservations, and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes, Ex-Serviceman and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

SCHEDULE

Name of post	Number of post	Classification	Scale of pay	Whether selection post or non-selection post	Whether benefit of added years of service is admissible under rule 30 of the Central Civil Service (Pension) Rules, 1972.
	2	3	4	5	6
1 Superintendent.	61* (2002) *Subject to variation dependent on work load.	General Central Service, Group 'C' Non-Ministerial, Non-Gazetted.	Rs.5500 175-9000	Selection	Not applicable

Attested
Surgit Chaudhary,
Advocate
on 13.2.04.

Age limit for direct recruits	Educational and other qualifications required for direct recruits	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees	Period of probation if any	Method of recruitment whether by direct recruitment or by promotion or deputation/absorption and percentage of the vacancies to be filled by various methods
7	8	9	10	11
Not applicable	Not applicable	Not applicable	Two years.	By promotion failing which by deputation.
In case of recruitment by promotion, deputation/absorption, grades from which promotion, deputation/absorption to be made		If a Departmental Promotion Committee exists, what is its composition		Circumstances in which Union Public Service Commission is to be consulted in making recruitment
12		13		14
Promotion: Upper Division Clerk with <u>ten years</u> regular service in the grade.		Group 'C' Departmental Promotion Committee (for considering promotion and confirmation) consisting of:-		Not applicable.
Note :— Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their senior would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service.		1. Joint Development Commissioner 2. Director 3. Deputy Director (Administration)		—Chairman —Member —Member.
Deputation :				
Officers of the Central Government:				
(i) holding analogous post on regular basis; OR				
(ii) with three years regular service in the pay scale of Rs. 5000-8000; or				
(iii) with ten years regular service in the pay scale of Rs. 4000-6000.				
Note 1.—The departmental officers who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.				
Note 2.—Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or other organization/department of the Central Government shall ordinarily not exceed three years.				

12

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Note 3.—The maximum age limit for appointment on deputation (including short term contract) shall be not exceeding 56 years as on the closing date of receipt of applications.

For ex-servicemen: Deputation/re-employment: The Armed Forces personnel due to retire or who are to be transferred to reserve within a period of one year and having the requisite experience and qualifications prescribed shall also be considered. Such persons shall be given deputation terms up to the date on which they are due for release from the Armed Forces, thereafter they may be considered on re-employment.

1	2	3	4	5	6
2. Stenographer Grade-II	39* (2002) *Subject to variation dependent on work load.	General Central Service, Group 'C' Ministerial Non-Gazetted.	Rs.5000 150-8000.	Selection	Not applicable
7	8	9	10	11	
Not applicable.	Not applicable	Not applicable	Two years	By promotion failing which by deputation	

Promotion:

Stenographer Grade III with eight years regular service in the grade..

Note:

Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their senior would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service.

Deputation:

Officers of the Central Government:

- (i) holding analogous post on regular basis; or
- (ii) with eight years regular service as Stenographer in the scale of pay of Rs. 4000-6000 or equivalent.

Note:—The period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organization/department shall ordinarily not exceed 3 years.

13
Group 'C' Departmental Promotion Committee (for considering promotion and confirmation) consisting of:—

1. Joint Development Commissioner —Chairman
2. Director —Member
3. Deputy Director (Administration) —Member.

14
Not applicable.

2-8-D

50

1	2	3	4	5	6
3. Upper Division Clerk	315* (2002) *Subject to variation dependent on work load.	General Central Service, Group 'C' Non-Ministerial Non-Gazetted.	Rs. 4000-100-6000	Non-Selection	Not applicable
7	8	9	10	11	
Not applicable	Not applicable	Not applicable	Two years	(i) Fifty per cent by promotion and (ii) Fifty per cent by deputation.	

12	13	14
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Promotion:
Lower Division Clerk with eight year regular service in the grade..

Group 'C' Departmental Promotion Committee (for considering promotion and confirmation) consisting of:—

Not applicable.

Note:
Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their senior would also be considered for promotion provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying or eligibility service or two year whichever is less, and have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service.

1. Director —Chairman
2. Deputy Director —Member
3. Assistant Director Grade I (In-charge Administration) —Member

Deputation:
Officers of the Central Government :
(i) holding analogous post on-regular basis, or
(ii) Lower Division Clerk with eight years regular service in the grade:

Note 1.—The departmental officers who are in the direct line of promotion shall not be eligible for consideration for appointment on deputation. Similarly, deputationists shall not be eligible for consideration for appointment by promotion.

Note 2.—Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in the same or other organization/department of the Central Government shall ordinarily not exceed threeyears.

Note 3.—The maximum age limit for appointment on deputation (including short term contract) shall be not exceeding 56 years as on the closing date of receipt of applications.

Govt. of India
Ministry of Small Scale Industries
Office of the Development Commissioner
Small Scale Industries

Nirman Bhavan, New Delhi-11.

ANNEXURE - IIDated: 31.10.2003

To All the SISIs/RTCs/SEPTI/HTDDC

Subject:- Grant of benefit under ACP scheme to the UDCs - clarification that in respect of common category posts ACP benefit is to be granted taking into account the hierarchies existing on all India level and not in a particular Deptt.

Sir,

I am to say that the scheme of grant of ACP benefit was introduced by the Deptt. of Personnel & Training vide their O.M. dtd. 9.8.1999. Certain distortions were noticed in the scheme for grant of ACP for which the DOPT had been issuing clarifications from time to time. One of the distortions related to the question as to how ACP benefits should be granted in respect of common category post which exist on all India basis like LDC, UDC, Asstt. and Supdt. DOPT vide their O.M. dtd. 18th July, 2001 (clarification No.56) had clarified that in respect of common category of posts like UDCs, Asstts. & Supdts. the hierarchies that existed on All India basis should be taken into account and not the hierarchies which exist in a particular office for the purpose of granting ACP benefit. In Small Industry Development Organisation, UDCs had been granted ACP benefits w.r.t. next higher post of Supdt. in the scale of Rs.5500-9000. In view of the clarification issued by the DOPT, ACP benefit granted to the UDCs of SIDO in the scale of Rs.5500-9000 is required to be reviewed and rectified by granting them ACP benefit with reference to next higher post of Assistant in subordinate offices in Government of India in the scale of pay of Rs.5000-8000 i.e. by taking into account all India hierarchies of such common category posts. The rectification will be effective w.e.f. 9.8.1999 or the date from which the concerned employee had been granted actual ACP benefit in the scale of pay of Rs.5500-9000 whichever is later.

To meet the requirement of "natural justice" it will be necessary that in the first instance, concerned employees, are given a proper Show Cause Notice to show as to why in the light of DOPT instructions the ACP benefit already granted to them in the scale of Rs.5500-9000 should not be withdrawn and they be granted ACP benefit in the scale of Rs.5000-8000 i.e. w.r.t. the post of Asstt. keeping in view the All India hierarchy for these common category post. For this purpose, a draft show cause notice has been devised and a copy of the same is forwarded herewith. This aspect is to be treated very important.

DOPT has also advised that after the concerned employee had been granted ACP benefit in the scale of pay of Rs.5000-8000, their pay will be fixed under normal rules of promotion i.e. FR 22.1 (a) (1). On their regular promotion as Supdt. their pay will be fixed under FR-22.1 (a) (2). Alternatively their pay may be fixed in the grade of O.S. directly w.r.t. the notional pay in the grade of UDCs on the date of their actual promotion under FR 22.1 (1) i.e. normal pay fixation formula. This will also entail recovery of over-payments as ACP benefit to UDCs will not be granted in lower scale of pay of Rs.5000-8000.

Advised
Suryajit Choudhury
Advocate
on 13.2.04.

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You are now requested to take further necessary action in the matter. The minutes of earlier Screening Committee granting ACP benefit in the scale of pay of Rs. 5500-9000 shall be deemed to have been accepted by the competent authority in modified form to provide for grant of ACP benefit in the scale of pay of Rs. 5000-8000 on the grounds explained above. The pay of officers may be re-fixed accordingly and over payments, if any, may be recovered from the concerned officers.

Yours faithfully,

(D.K. Gautam)
Dy. Director (Admn)

Copy to:

All the Autonomous Bodies under office of DC (SSI). They are also requested to initiate similar action in respect of UDCs, who have already been granted benefit of ACP benefit in the scale of Rs. 5500-9000 where the intervening post of Asstt. does not exist.

A

2. ABC Division

(D.K. Gautam)
Dy. Director (Admn)

31. o/c 52
ANNEXURE-III

Dated the 12th Nov/2003

TSAH

Director,
SISI, Guwahati-21.

Grant of benefit under ACP scheme to the UDCs clarification that in respect of common category posts ACP benefit is to be granted taking into account the hierarchies existing on All India Level and not in a particular Deptt.

With reference to the subject cited above and the 'Show Cause Notice' issued to me vide letter No.A.32016/3/2003-Estt. dated 12.11.2003 I am to state that I was granted the ACP benefit w.e.f. 9.8.99 in the next higher scale of pay after fulfilling the required conditions laid down in the scheme. The next higher scale in SIDO after UDC is office Supdt. With the scale of Rs. 5500-175-9000/-. The benefit was given as per the ACP scheme introduced by Central Govt. as per the recommendation of the 5th Central Pay Commission w.c.f. 9.8.99 as a safety net to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. As stated in your 'Show Cause Notice' to grant benefit in the scale of Assistant, i.e. 5000-150-8000/- does not arise as because there is no post of Assistant in SIDO next to UDC. The next promotional post of UDC is Supdt. in the SIDO with the scale of Rs. 5500-175-9000/- and it has clearly been stated in the Annexure - I Sl. No.-9 in the scheme that the financial benefit allowed under the ACP scheme shall be final and no fixation of financial benefit shall accrue at the time of regular promotion i.e. posting against a functional / regular post in the higher grade.

So far as the CCS (revised pay) Rules 1997 there is a scale of Rs.4500-125-7000, which is the immediate higher scale to UDC has also been omitted in connection with the Hierarchy as stated in the scheme. The post of Assistant in the scale of Rs.5000-150-8000 which does not exist at all in SIDO must not be included in case of UDC. As the post has not been created in the SIDO Department. So the scale as said in the show cause notice does not arise.

Hence, the higher grade in the SIDO is the post of office supdt. and after regular promotion as Supdt. the fixation of pay does not arise as per the scheme as stated above. The benefit was granted by a Screening Committee constituted by the Director, SISI, Guwahati with the approval of DC (SSI), New Delhi.

Therefore, the question of granting ACP in the post of Assistant does not arise on the ground that there is no post of Assistant in SIDO, and the decision for granting ACP was finalized by the competent authority, i.e. by the Screening Committee, Director and DC(SSI), New Delhi for which the employees like us are not responsible and penalized.

So far the clarification as stated vide DOPTs OM dtd.18.07.01(clarification no.56) is concerned, I was neither informed nor communicated regarding the said OM by the office for which I am not aware and should not be punished.

Therefore, keeping in view the above points the employees like us must not be pushed to hardship by imposing penalty. But at the same time if penalized, there is no alternative but to approach the court of law for justice.

Yours faithfully,

(Signature)

(LILY GOHAIN DISE)

UDC

SISI/Guwahati-21

Advised
Suresh Choudhury
Advocate
on 13.2.04.

- 32 -

Registered

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ANNEXURE - IV

No.A-60015/16/2003-A (NG)
Government of India
Ministry of Small Scale Industries
Office of the Development Commissioner
(Small Scale Industries)

Nirman Bhawan, New Delhi-110011
Dated 10-12-2003

The Director,
All SISIs / RTCs / SEPTI / HTDDC.

Sub: - Grant of benefit under ACP scheme to the UDCs - clarification that in respect of common category posts ACP benefit is to be granted taking into account the hierarchies existing on all India level and not in a particular Deptt.

Sir,

I am to say that under this office letter of even number dated 31-10-2003, on the subject mentioned above, you were advised to review the ACP benefit granted to the UDCs of SIDO in the scale of pay of Rs. 5500 - 9000 with reference to the post of Superintendent and instead consider granting them benefit in the scale of pay of Rs. 5000 - 8000 with reference to the post of Assistant as per instructions contained under item No. 56 of DOPT OM No. 35034/1/97-Estt (D)(Vol.IV) dated 18-7-2001.

With reference to the show cause notice issued to the affected UDCs, some of the UDCs have now represented that they be allowed to retain benefit of ACP in the scale of pay of Rs. 5500 - 9000 with reference to the post of Superintendent. A list of such UDCs who have represented in the matter is enclosed herewith. Since, the instructions issued by the DOPT referred to above, specifically provide that in common category post like LDC/UDC, ACP benefit is to be granted with reference to all India hierarchy. On All India basis, in non-Secretariat organization, the hierarchy qualifying for ACP benefit is LDC (Rs. 3050 - 4590), UDC (Rs. 4000 - 6000), Assistant (Rs. 5000 - 8000) and Superintendent (Rs. 5500 - 9000). As such UDCs of SIDO are entitled to ACP benefit with reference to the post of Assistant in the scale of pay of Rs. 5000 - 8000 existing in non-Secretariat organizations. In view of this explicit instruction of the DOPT in the matter, the request of the UDCs of SIDO for retention of ACP benefit in the scale of pay of Rs. 5500 - 9000 cannot be acceded to. DOPT who have been consulted in the matter have also advised that the refixation of pay of officer in the scale of pay of Rs. 5000 - 8000 will be done w.e.f. 9-8-99 or the actual date from which the concerned UDCs were granted ACP benefit.

The UDCs in question may be informed accordingly and with reference to the ACP benefit granted to them w.e.f. 9-8-99 or the actual date from which they have got ACP benefit their pay may be refixed in the scale of pay of Rs. 5000 - 8000. Over-payments, if any, may be recovered. A copy of this letter may also be displayed on the notice board of your office.

Yours faithfully,

D.K. Gautam

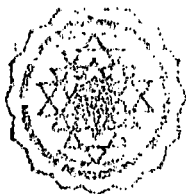
(D.K. Gautam)
Dy. Director Admn (NG)

*Advised
Surajit K. Advait
on 13.2.04*

Annexure

List of UDCs who have represented to allow them to retain benefit of ACP in the scale of pay of Rs. 5500 - 9000 with reference to the hierarchy of Supdt. in the organization

S. No.	Name of UDCs	Name of SISI / RTC
1	Sh. D. Jaya Ganesh	RTC, Chennai
2	Sh. Mohammed Ali Sharief	- do -
3	Smt. L.G. Das	SISI, Guwahati
4	Smt. J. Devi	- do -
5	Sh. A.R. Baishya	- do -
6	Sh. B. N. Sharma	- do -
7	Sh. K. Choudhury	- do -
8	Sh. A.C. Das	- do -
9	Sh. K. Kalita	- do -
10	Sh P.K. Choudhury	- do -
11	Sh. T. M. Chandy	SEPTI, Tiruvalla
12	Sh. Balram Dubey	SISI, Kanpur
13	Sh. G. K. Mishra	- do -
14	Sh. S. M. Sinha	- do -
15	Sh. G. D. Sharma	SISI, Agra
16	Sh. Ram Nath	- do -
17	Sh. S.S. Gupta	- do -
18	Sh. C. S. Sen	SISI, Allahabad
19	Smt. Kanta Pani	SISI, Ludhiana
20	Smt. Darshan Kaur	- do -
21	Sh. Kewal Krishan	- do -



GOVERNMENT OF INDIA
MINISTRY OF SMALL SCALE INDUSTRIES
SMALL INDUSTRIES SERVICE INSTITUTE
BAMUNIMAIDAN : GUWAHATI-781021
(A S S A M)

ANNEXURE - V

No.A.32016/ 2001-Estt

dated 01st July 2003

ORDER

Sub: Grant of benefits under **Assured Career Progression Scheme** in respect of individuals for whom Director, SISI, Guwahati is the appointing authority and where up-gradation of scales of pay proposed is to be approved by the DC, SSI - Cases of benefits under ACP due for the period up to 30-09-2003 - Orders - issue of

On the recommendation of the Screening Committee and in pursuance to the Development Commissioner, SSI, New Delhi's Order No. A.32016/3/2000-A(NG) dated 12-06-2003 conveying the approval to the above recommendations, the Sanction is hereby accorded for the grant of benefits under **Assured Career Progression Scheme** as envisaged under Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi's O.M.35034/1/97-Estt (D) dated 09-08-1999 as amended from time to time in respect of the following individuals, as per details given against them:-

SECOND UPGRADE under ACP (On completion of 24 years of service)

Sl. No.	Name and Designation	Scale of Pay sanctioned as SECOND UPGRADE under ACP Scheme	Date of effect for the upgraded scale of pay sanctioned
1.	Shri Ranjit Bhattacharjee, Ex- UDC (* He was appointed in the post of 'Senior Accountant' in SIDO , ON DEPUTATION BASIS, for the period from 02-03-1998 to 08-02-2002 and hence his case for ACP was not taken earlier. He is eligible for ACP up-gradation scale of pay of Rs.5500-9000 with effect from 09-08-1999 on notional basis and the actual benefit admissible with effect from 09-02-2002.	Rs5500-9000	w.e.f. 09-08-1999
2.	Smt. M. Choudhury, Steno-Gr.III, SISI, Guwahati	Rs5500-9000	w.e.f. 13-09-2000
3.	Shri Arijit Chakraborty, Steno-Gr.III, Branch SISI, Silchar	Rs5500-9000	w.e.f. 01-09-2003
4.	Shri K.K.Narzary UDC, Branch SISI, Tura	Rs.5500-9000	w.e.f. 01-03-2001

(p.t.o.)

*Approved
Sanjit Choudhury
Advocate*
13.2.04

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The above benefits of up-gradation of scale of pay under the Scheme of ACP is granted subject to the following terms and conditions:-

- 1) The benefits of up-gradation of scale of pay is granted as per terms and conditions envisaged under Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi's O.M.35034/1/97-Estt (D) dated 09-08-1999 as amended from time to time.
- 2) On sanction of up-gradation of scale of pay under ACP Scheme, the pay of the officials will be fixed under FR 22 (I) (a) (1). They are eligible for exercising option for fixation of pay as per provisions under FR 22 (I) (a) (1) within a period of one month from the date of effect of up gradation of Scale of Pay or from the date of issue of above orders, whichever is later, so as to get the pay fixed either from the date of effect of up gradation of scale of pay or from the date of accrual of next increment in the lower scale of pay.
- 3) As and when the individuals are given regular promotion in the next higher grade the benefit of ACP will get absorbed and the individual will be governed by the terms and conditions of regular promotions. The financial pay fixation benefits allowed under the ACP Scheme will be final and no fresh fixation benefits shall accrue to the individuals at the time of regular promotion.

(M. BORGHAIN)
DIRECTOR

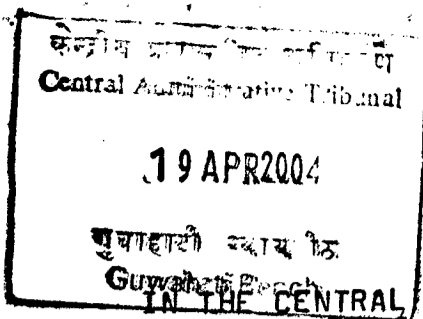
To
The individuals concerned (through their officer-in-charge, Branch SISIs).

Copy to : 1) The Development Commissioner, Small Scale Industries, NIRMAN BHAVAN,
New Delhi- 110 011 for information with reference to his order
No. A.32016/3/2000-A(NG) dated 12-06-2003 referred to above.

- 2) Pay and Accounts Office, SSI, 111 & 112 B.T. Road, Kolkata- 700108.
- 3) Accounts Section, SISI, Guwahati -21.
- 4) The Deputy Director -in-charge/ Assistant Director in-charge,
Branch SISIs, Silchar and Tura.
- 5) The Director, Small Industries Service Institute, Patna 800 013 w.r.t his letter
No. A.20014(46)/02-Admn/1488 dated 05-12-2002 for further necessary action
regarding Shri Ranjit Bhattacharjee, Present Office superintendent.
- 6) The Director, Small Industries Service Institute, New Delhi -110 020 with
regard to orders in respect of Shri Ranjit Bhattacharjee,
present Office Superintendent of your office.
- 7) Personal files/ Service Book.

slc

(M. BORGHAIN)
DIRECTOR



ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH::GUWAHATI

- 36 - 58

Union of India & Ors
Respondent
Through:-
Ananta Ram Baishya
Addl. Central Govt. Standing Counsel
C. A. T.
Guwahati

In the matter of :-

O.A. No.26 of 2004

Ananta Ram Baishya & Ors.

... Applicant

-Versus-

Union of India & Ors.

... Respondent

WRITTEN STATEMENT FOR AND ON BEHALF OF
RESPONDENTS NOS.1,2 & 3.

I, M. Borgohain, Director, Small Industries Service Institute, Bamunimaidan, Guwahati-781021, Assam, do hereby solemnly affirm and say as follows :-

1. That I am the Director, Small Industries Service Institute, Bamunimaidan, Guwahati and Respondent No.3 and as such fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in this written statement the other contentions and statement may be deemed to have been denied. I am authorised to file the written statement on behalf of all the respondents.

2. That at the outset the respondents beg to state that the present application filed by the applicants is misconceived and not maintainable as with reference to the regular post of UDC held by the applicants, they are entitled to ACP benefit in the scale of pay of Rs.5000-8000/- only as per rules. The ACP scale of pay of Rs.5500-9000/-, which was initially granted to the applicants, related to the post of Superintendent i.e. the hierarchy available in the organization where they are currently working. This scale of pay was withdrawn and they were instead granted ACP scale of pay in the scale of pay Rs.5000-8000/- with reference to the next hierarchy available in respect of common category of posts of LDCs/UDCs "on all India basis". This has strictly been done as per instructions

Contd..p/2-

51 32/-

contained vide clarification No.56 of Department of Personnel and Training (here-in-after referred to as DOPT) O.M.No.35034/1/97-Estt(D)(Vol.IV), dated 18-7-2001 (ANNEXURE-R-1). This changeover was effected after giving the applicants due opportunity of being heard by issue of proper show cause notices. Thus, the requirement of principle of Natural Justice was properly followed in these cases. In term of DOPT O.M. dated 18-7-2001 (ANNEXURE-R-1), all the applicants were required to be granted ACP benefit taking into accounts 'common category posts' of field organization of Central Government on "All India basis". Since the modified scale of pay were granted to the applicants towards ACP benefits in pursuance of standing instructions of the Govt., the application may be dismissed.

3. That the respondents beg to state that the common category of posts in the administration stream existing in subordinate/field offices of Govt. of India on all India basis are :-

- | | | |
|-------------------|---|------------------|
| 1. Superintendent | : | (Rs.5500-9000/-) |
| 2. Assistant | : | (Rs.5000-8000/-) |
| 3. UDC | : | (Rs.4000-6000/-) |
| 4. LDC | : | (Rs.3050-4590/-) |

The subordinate/field offices of Central Govt. may either have all the above posts or they may have only some of above posts e.g. Small Industries Service Institute, Guwahati which is part of Small Industry Development Organization where the applicants are working, is not having the post of Assistant.

The underlying intent of the Central Govt. in issuing clarification No.56 under DOPT O.M. dated 18-7-2001 (ANNEXURE-R-1) is that, LDCs who are recruited through a common source i.e. Staff Selection Commission through a common competitive Examination in the Central Govt. but are deployed in various Deptts., gets an equal chance in the matter of ACP benefits keeping the prevalent all India hierarchy in view in respect of common category post like LDCs/UDCs/Assistants etc. As such DOPT instructions dated 18-7-2001 ("Annexure-R-1) are towards promotion of "law of equality" (as enshrined in Article-14 of the Constitution). Thus keeping in view the object of instructions contained in clarification No.56 of DOPT O.M. dated 18-7-2001 i.e. to ensure equal treatment for granting ACP benefits to similarly circumstanced LDCs recruited through common source

Contd.p/3-

but deployed in different Deptts. the grievances of the applicant cannot have any over-riding effect on the DOPT instructions referred to above. In the face of the object of DOPT policy of propagating equal treatment in present case the applicants have no case to claim that they are a different class amongst LDCs recruited through a common source but are bound to be deployed in various Deptts. where all the Deptts. may not be having all the common category post. If the request of applicant is acceded to, this will do violence to the principle of equality and equal treatment to similarly circumstanced officers.

4. That with reference to to the statements made in paragraph 1 of the application, the respondents beg to state that the applicants had been granted ACP benefits in a modified scale of pay namely 5000-8000/- by withdrawing their earlier ACP benefits in the scale of Rs.5500-9000/- strictly as per instructions and after following the due procedure of natural justice. The allegation of any arbitrary action are denied.

5. That the respondents have no comments to the statement made in paragraph 2 & 3, 4.1 to 4(3) of the application.

6. That with regard to the statements made in paragraph 4.(4) to 4(6) of the application, the respondents beg to state that as per instructions issued by Deptt. of Personnel & Training of their O.M. dated 18-7-2001 the applicant are entitled to ACP benefits with reference to the post of Assistant in scale of pay of Rs.5000-8000/- only by keeping the all India hierarchy for common category post in view. The applicants claim benefits for ACP in the ~~aa~~ scale of pay of Rs. 5500-9000/- is not supported by rule position. The original scheme of ACP notified by DOPT vide their O.M. date 9-8-99 is to be read with DOPT O.M. dated 18-7-2001 which had prescribed that in respect of common category post like UDC only all India hierarchy for common category posts are to be kept in view for the purpose of grant of ACP benefits.

7. That with regard to the statements made in paragraph 4.7 of the application, the respondent beg to state that as stated above the ACP benefits of respondent was modified ffrom the scale of Rs. ~~5600-9000/-~~ to Rs.5000-8000/- taking into account the DOPT instructions contained in their O.M. dated 18-7-2001 under which the hierarchy of posts in respect of common category posts existing on all India basis are to be taken into account.

Contd.p/4-

M. Borghain
 निदेशक / Director
 ल.उ.से.सं. / S. I. S. I.
 गुवाहाटी / Guwahati-21

Thus, the applicants was granted revised ACP benefits in the scale of pay of Rs.5000-8000/- with reference to the post of Assistant existing in field offices of Government of India. This was done after according due opportunity to the applicants of being heard under law of natural justice by issue of a show-cause notice.

8. That with regard to the statements made in paragraph 4.8 and 4.9 of the application, the respondent beg to state that the applicants were given due opportunity under law of natural justice before modifying their ACP benefits.

9. That with regard to the statements made in paragraph 4.10 and 4.11 of the application, the respondent beg to state that the representations made by the applicants suggesting that they may be allowed to retain ACP benefits in the scale of pay of Rs.5500-9000/- with reference to the post of Superintendent existing within the Organisation was duly considered and a general speaking reply was issued rejecting their claim to all the stake holders within the Organisation. (Annexure-R-2). This was as per instructions contained in Department of Personnel & Training O.M. dated 18-7-2001 (annexure-R-1).

10. That with regard to the statements made in paragraph 4.12 of the application, the respondent beg to state that the Stenographer Grade-III in the scale of pay of Rs.4000-6000/- had been granted ACP benefits in the Scale of pay of Rs.5000-8000/- keeping in view the all India hierarchies for such common category posts. The action to modify the ACP benefit from the scale of pay of Rs.5500/-to 9000/- and Rs.5000-8000/- has been taken through a general order which is applicable in respect of all UDCs of the Organisation.

11. That with regard to the statements made in paragraph 4.13 of the application, the respondent beg to state that as per instructions issued by the Deptt. of Personnel & Training of their O.M. dated 18-7-2001 (Annexure R-1) the applicant are entitled to ACP benefits with reference to the post of Assistant in the scale of pay of Rs.5000-8000/- only by keeping the all India hierarchies for "common category posts" in view.

Contd.p/5-


M. Borgohain
निदेशक / Director
ल. उ. से. सं. / S. I. S. I.
गुवाहाटी / Guwahati-21

12, That with regard to the statements made in paragraph 4.14 and 4.15 of the application, the respondent beg to state that the object of instructions contained in clarification No.56 of DOPT O.M. dated 18-7-2001 (Annexure R-1) is to ensure equal treatment for granting ACP benefits to similarly circumstanced LDCs recruited through common source but deployed in different Deptts. The grievances of the applicant cannot have any over-riding effect on the DOPT instructions referred to above. In the face of the object of DOPT policy of propagating equal treatment in ~~xxx~~ present case, the applicants have no case to claim that they are a different class amongst LDCs recruited through a common source but are bound to be deployed in various Deptts. where all the Deptts. may not be having all the common category posts. Since the objective of the policy laid down by the DOPT vide their O.M. dated 18-7-2001 is to promote the law of equality as enshrined in Article 14 of the Constitution amongst similarly circumstance Officers, the grievances of the applicants are not maintainable.

13. That with regard to the statements made in paragraph 4.16 to 4.18 of the application the respondent beg to state that the allegation of any arbitrary, malafide, unjust, unfair action on the part of respondents are denied. It is affirmed that the action taken by the respondents is as per instructions issued by the DOPT for which the object of basic policy laid down by DOPT is to ensure the law of equality amongst similar circumstanced LDCs who are recruited through the same examination but may be deployed in different departments of Government of India. The intention of policy laid down by the Government is that such LDCs get uniform benefits of ACP with reference to all India hierarchies of common category administrative posts. Thus, the basic policy being followed by the Government is sound vis-a-vis law of equality.

14. That the respondents have no comments to the statements made in paragraph 4.19 of the application.

15. That with regard to the statements made in paragraph 5 of the application, the respondent beg to state that in view of the statements made above, there is no merit in the contention made by the applicants under the head grounds. It is averred that grant of ACP scale of pay is a merely notional pay benefit only. It does not implid that by virtue of grant of ACP scale of pay, applicants had been performing the duties of higher post of Superintendent. The claims of the applicants may be dismissed,

Contd.p/6-

being devoid of any merit. It is denied that applicants had ever performed the duties of Superintendent by virtue of their having been granted ACP scale of pay.

16. That the respondents have no comments to the statements made in paragraph 6 & 7 of the application.

17. That with regard to the statements made in paragraph 8.1 of the application, the respondent beg to state that the orders dated 31-10-2003 (Annexure P-II) & 10-12-2003 (Annexure - P-IV) are lawful orders based on the instructions issued by the DOPT vide their O.M dated 18-7-2001.

18. That with regard to the statements made in paragraph 8.2 of the application, the respondent beg to state that in view of above forgings, the applicants are entitled to ACP benefits in the scale of Rs.5000-8000/- only with reference to all India hierarchies of common category posts existing in field offices of Central Government.

19. That with regard to the statements made in paragraph 8.3 of the application, the respondent beg to state that DOPT O.M. dated 18-7-2001 is a legally valid order as it promotes law of equality (Article-14) amongst similarly circumstanced Officers.

20. That with regard to the statements made in paragraph 8.4 of the application, the respondents beg to state that the applicants are entitled to ACP benefits in the scale of Rs.5000-8000/- only as per instructions issued by the DOPT vide their O.M. dated 18-7-2001.

21. That with regard to the statements made in paragraph 8.5 and 8.6 of the application, the respondents beg to state that since the application filed by the applicants is devoid of any merit, the claim of applicants for cost is not justifiable.

22. That the respondents have no comments to the statement made in paragraph 9 to 12 of the application.

23. That the applicant is not entitled to any relief sought for in the application and the same is liable to be dismissed with costs and the stay order may be vacated.

Contd..p/7-

V E R I F I C A T I O N

I, M. Borgohain, presently working as Director,
 Small Industries Service Institute, Bamunimaidan, Guwahati-21
 being duly authorised and competent to sign this verification
 do hereby solemnly affirm and state that the statements made
 in paragraphs 1, 5 + 14 of the application are
 true to my knowledge and belief, these made in paragraphs 2-4, 6-B
 + 15-23 being matter of record are true to my information derived there
 from and those made in the rest are humble submission before
 the Hon'ble Tribunal. I have not suppressed any material facts.

AND I sign this verification on this the 15th day
 of April, 2004


 M. Borgohain
 निदेशक / Director
 ल. उ. से. सं. / S. I. S. I.
 गुवाहाटी / Guwahati-21.

DEPONENT

110001
July 18, 2000

OFFICE MEMORANDUM

Subject: - ASSURED CAREER PROGRESSION SCHEME FOR THE CENTRAL GOVERNMENT CIVILIAN EMPLOYEES - CLARIFICATIONS REGARDING

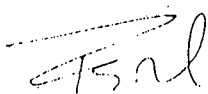
The undersigned is directed to invite reference to the Department of Personnel and Training Office Memorandum of even number dated August 9, 1999 regarding the Assured Career Progression Scheme (ACPS) and subsequent Office Memorandum dated February 10, 2000 clarifying the various points of doubt received from various quarters.

1. Some more situations in which a doubt persists in various organizations in regard to applicability/implementation of ACP Scheme have been brought to the notice of this Department. These have been duly examined and appropriate advice has been conveyed in individual cases. However, as it is observed that similar doubts are being received from various other Ministries/Departments/Organizations, it has been considered appropriate to issue a second set of clarificatory orders containing point-wise clarification to the additional points of doubt.

2. Cases where the ACP Scheme has already been implemented shall be reviewed/rectified, if the same are not found to be in accordance with the scheme/clarifications.

3. All Ministries/Departments may give wide circulation to these clarificatory instructions for general guidance and appropriate action in the matter.

4. Hindi version would follow.

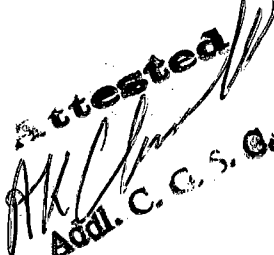

(R.K. GOEL)

DEPUTY SECRETARY TO THE GOVT OF INDIA

All Ministries/Departments of the Government of India

Copy to:-

1. President's Secretariat/Vice President's Secretariat/Prime Minister's Office/ Supreme Court/Rajya Sabha Secretariat/Lok Sabha Secretariat/Cabinet Secretariat/UPSC/CVC/C&AG/Central Administrative Tribunal (Principal Bench), New Delhi.
2. All attached/subordinate offices of the Ministry of Personnel, Public Grievances and Pensions.
3. Secretary, National Commission for Minorities, New Delhi.
4. Secretary, National Commission for Scheduled Castes/Scheduled Tribes.
5. Secretary, Staff Side, National Council (JCM), 13-C, Ferozeshah Road, New Delhi.
6. All Staff Side Members of the National Council (JCM).
7. Facilitation Center, DoP&T - 20 copies
8. Establishment (D) Section - 1000 copies
9. NIC (DoP&T) for placing this Office Memorandum on the Website

Attested

Add. C. C. S. O.

9

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Annexure R-2

Registered

No.A-60015/16/2003-A (NG)
Government of India
Ministry of Small Scale Industries
Office of the Development Commissioner
(Small Scale Industries)

Nirman Bhawan, New Delhi-110011
Dated 10-12-2003

The Director,
All SISIs / RTCs / SEPTI / HTDDC.


Sub: - Grant of benefit under ACP scheme to the UDCs - clarification that in respect of common category posts ACP benefit is to be granted taking into account the hierarchies existing on all India level and not in a particular Deptt.

Sir,

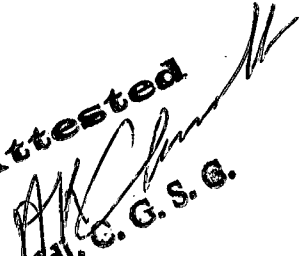
I am to say that under this office letter of even number dated 31-10-2003, on the subject mentioned above, you were advised to review the ACP benefit granted to the UDCs of SIDO in the scale of pay of Rs. 5500 - 9000 with reference to the post of Superintendent and instead consider granting them benefit in the scale of pay of Rs. 5000 - 8000 with reference to the post of Assistant as per instructions contained under item No. 56 of DOPT OM No. 35034/1/97-Estt (D)(Vol.IV) dated 18-7-2001.

With reference to the show cause notice issued to the affected UDCs, some of the UDCs have now represented that they be allowed to retain benefit of ACP in the scale of pay of Rs. 5500 - 9000 with reference to the post of Superintendent. A list of such UDCs who have represented in the matter is enclosed herewith. Since, the instructions issued by the DOPT referred to above, specifically provide that in common category post like LDC/UDC, ACP benefit is to be granted with reference to all India hierarchy. On All India basis, in non-Secretariat organization the hierarchy qualifying for ACP benefit is LDC (Rs. 3050 - 4590), UDC (Rs. 4000 - 6000), Assistant (Rs. 5000 - 8000) and Superintendent (Rs. 5500 - 9000). As such UDCs of SIDO are entitled to ACP benefit with reference to the post of Assistant in the scale of pay of Rs. 5000 - 8000 existing in non-Secretariat organizations. In view of this explicit instruction of the DOPT in the matter, the request of the UDCs of SIDO for retention of ACP benefit in the scale of pay of Rs. 5500 - 9000 cannot be acceded to. DOPT who have been consulted in the matter have also advised that the refixation of pay of officer in the scale of pay of Rs. 5000 - 8000 will be done w.e.f. 9-8-99 or the actual date from which the concerned UDCs were granted ACP benefit.

The UDCs in question may be informed accordingly and with reference to the ACP benefit granted to them w.e.f. 9-8-99 or the actual date from which they have got ACP benefit their pay may be refixed in the scale of pay of Rs. 5000 - 8000. Over-payments, if any, may be recovered. A copy of this letter may also be displayed on the notice board of your office.

Yours faithfully,

(D.K. Gautam)
Dy. Director Admn (NG)

Encl: As above.

Attested

Addl. C.G.S.O.

Dated: 31.10.2003

ANNEXURE II
67
ANNEXURE - P II
P-II
45

To All the SISIs/RTCs/SEPTI/HTDDC

Subject:- Grant of benefit under ACP scheme to the UDCs - clarification that in respect of common category posts ACP benefit is to be granted taking into account the hierarchies existing on all India level and not in a particular Deptt.

Sir,

I am to say that the scheme of grant of ACP benefit was introduced by the Deptt. of Personnel & Training vide their O.M. dtd. 9.8.1999. Certain distortions were noticed in the scheme for grant of ACP for which the DOPT had been issuing clarifications from time to time. One of the distortions related to the question as to how ACP benefits should be granted in respect of common category post which exist on all India basis like LDC, UDC, Asstt. and Supdt. DOPT vide their O.M. dtd. 18th July, 2001 (clarification No.56) had clarified that in respect of common category of posts like UDCs, Asstts. & Supdts, the hierarchies that existed on All India basis should be taken into account and not the hierarchies which exist in a particular office for the purpose of granting ACP benefit. In Small Industry Development Organisation, UDCs had been granted ACP benefits w.r.t. next higher post of Supdt. in the scale of Rs.5500-9000. In view of the clarification issued by the DOPT, ACP benefit granted to the UDCs of SIDO in the scale of Rs.5500-9000 is required to be reviewed and rectified by granting them ACP benefit with reference to next higher post of Assistant in subordinate offices in Government of India in the scale of pay of Rs.5000-8000 i.e. by taking into account all India hierarchies of such common category posts. The rectification will be effective w.e.f. 9.8.1999 or the date from which the concerned employee had been granted actual ACP benefit in the scale of pay of Rs.5500-9000 whichever is later.

To meet the requirement of "natural justice" it will be necessary that in the first instance, concerned employees, are given a proper Show Cause Notice to show as to why in the light of DOPT instructions the ACP benefit already granted to them in the scale of Rs.5500-9000 should not be withdrawn and they be granted ACP benefit in the scale of Rs.5000-8000 i.e. w.r.t. the post of Asstt. keeping in view the All India hierarchy for these common category post. For this purpose, a draft show cause notice has been devised and a copy of the same is forwarded herewith. This aspect is to be treated very important.

DOPT has also advised that after the concerned employee had been granted ACP benefit in the scale of pay of Rs.5000-8000, their pay will be fixed under normal rules of promotion i.e. FR-22.1 (a) (1). On their regular promotion as Supdt. their pay will be fixed under FR-22.1 (a) (2). Alternatively their pay may be fixed in the grade of O.S. directly w.r.t. the notional pay in the grade of UDCs on the date of their actual promotion under FR 22 (1) i.e. normal pay fixation formula. This will also entail recovery of over-payments as ACP benefit to UDCs will not be granted in lower scale of pay of Rs.5000-8000.

Impressed order

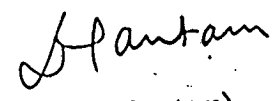
Attested
Addl. C. G. S. O.

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You are now requested to take further necessary action in the matter. The minutes of earlier Screening Committee granting ACP benefit in the scale of pay of Rs. 5500-9000 shall be deemed to have been accepted by the competent authority in modified form to provide for grant of ACP benefit in the scale of pay of Rs. 5000-8000 on the grounds explained above. The pay of officers may be re-fixed accordingly and over payments, if any, may be recovered from the concerned officers.

Yours faithfully,

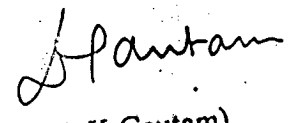


(D.K. Gautam)
Dy. Director (Admn)

Copy to:

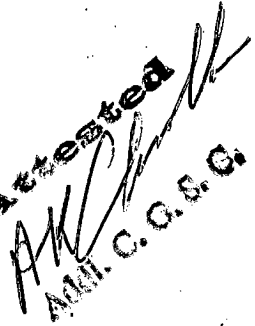
All the Autonomous Bodies under office of DC (SSI). They are also requested to initiate similar action in respect of UDCs, who have already been granted benefit of ACP benefit in the scale of Rs. 5500-9000 where the intervening post of Asstt. does not exist.

2. ABC Division



(D.K. Gautam)
Dy. Director (Admn)

Attested



Attesting Officer
C. G. S. G.

- 32 -
No.A-60015/16/2003-A (NG)
Government of India
Ministry of Small Scale Industries
Office of the Development Commissioner
(Small Scale Industries)

Registered

12
6
~~ANNEXURE IV~~

ANNEXURE - P IV
R.V.

Nirman Bhawan, New Delhi-110011
Dated 10-12-2003

The Director,
All SISIs / RITCs / SEPTI / HTDDC.

Sub: - Grant of benefit under ACP scheme to the UDCs - clarification that in respect of common category posts ACP benefit is to be granted taking into account the hierarchies existing on all India level and not in a particular Deptt.

Sir,

I am to say that under this office letter of even number dated 31-10-2003, on the subject mentioned above, you were advised to review the ACP benefit granted to the UDCs of SIDO in the scale of pay of Rs. 5500 - 9000 with reference to the post of Superintendent and instead consider granting them benefit in the scale of pay of Rs. 5000 - 8000 with reference to the post of Assistant as per instructions contained under item No. 56 of DOPT OM No. 35034/1/97-Estt (D)(Vol.IV) dated 18-7-2001.

With reference to the show cause notice issued to the affected UDCs, some of the UDCs have now represented that they be allowed to retain benefit of ACP in the scale of pay of Rs. 5500 - 9000 with reference to the post of Superintendent. A list of such UDCs who have represented in the matter is enclosed herewith. Since, the instructions issued by the DOPT referred to above, specifically provide that in common category post like LDC/UDC, ACP benefit is to be granted with reference to all India hierarchy. On All India basis, in non-Secretariat organization the hierarchy qualifying for ACP benefit is LDC (Rs. 3050 - 4590), UDC (Rs. 4000 - 6000), Assistant (Rs. 5000 - 8000) and Superintendent (Rs. 5500 - 9000). As such UDCs of SIDO are entitled to ACP benefit with reference to the post of Assistant in the scale of pay of Rs. 5000 - 8000 existing in non-Secretariat organizations. In view of this explicit instruction of the DOPT in the matter, the request of the UDCs of SIDO for retention of ACP benefit in the scale of pay of Rs. 5500 - 9000 cannot be acceded to. DOPT who have been consulted in the matter have also advised that the refixation of pay of officer in the scale of pay of Rs. 5000 - 8000 will be done w.e.f. 9-8-99 or the actual date from which the concerned UDCs were granted ACP benefit.

The UDCs in question may be informed accordingly and with reference to the ACP benefit granted to them w.e.f. 9-8-99 or the actual date from which they have got ACP benefit their pay may be refixed in the scale of pay of Rs. 5000 - 8000. Over-payments, if any, may be recovered. A copy of this letter may also be displayed on the notice board of your office.

Yours faithfully,

D.K. Gautam

(D.K. Gautam)

Dy. Director Admn (NG)

Attested

[Signature]
Asst. C. G. S. O.

[Signature]
[Signature]

-48-
70

7 MAY 2004
G...

Filed by the applicants
through:
Subrata Raj
Advocate.
Smt.
T.S.04.

**.IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI**

In the Matter of:

O.A. No. 26 /2004

Shri Ananta Ram Baishya & Ors.

.. Applicants

-Vs-

Union of India & Ors.

.. Respondents

-AND-

In the matter of :

Rejoinder submitted by the applicant in reply to the written statement submitted by the Respondents.

The applicants above named most humbly and respectfully beg to state as under: -

1. That your applicants deny the statements made in para 2, 3, 4, 6, 7, 11, 18 and 20 of the written statement and beg to submit that consequent upon the grant of financial upgradation under the ACP Scheme, the applicants were placed in the scale of Rs. 5500-9000/- by a public order issued by the respondents after observing all procedural formalities. It is a settled position of law that a public order once issued cannot be twisted subsequently to the disadvantage of the persons who were benefited by such public order. The action of the respondents reducing the scale of the

applicants from Rs. 5500-9000/- to Rs. 5000-8000/- by twisting the public order issued earlier is a clear departure from the settled law and is therefore not sustainable. The plea of common category of posts is an after-thought of the Respondents which is clearly violative of the very provisions of the ACP Scheme under which the financial upgradation in question was granted to the applicants. The provision laid down under condition No.7 of the ACP Scheme clearly spells out as follows:-

"7. Financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category of posts without creating new posts for the purpose--
--."

In the instant case, the existing hierarchy in the respondent department, relevant to the applicants is in the order of LDC-UDC-Superintendent. Accordingly, keeping in conformity with the provision of the Scheme quoted hereinabove and keeping in view the existing hierarchy of posts in the respondent department, the applicants were upgraded from UDC to Superintendent and were given the scale of Superintendent and were given the scale of Superintendent i.e. Rs. 5500-9000/- which was only just and in accordance with law. The subsequent plea of the respondents that the applicants were mistakenly placed in the scale of Assistant on the basis of All-India hierarchy of common category of posts is illegal, malafide and arbitrary. The All-India

hierarchy of LDC-UDC-Assistant-Superintendent is not applicable in case of the applicants since the post of Assistant does not exist in the existing hierarchy under the respondent department and as such the respondents cannot create an imaginary post of Assistant for the sole purpose of denying the benefit, already granted to the applicants, more so, when such creation of posts have been expressly forbidden under the relevant scheme as quoted above.

The O.M dated 18.07.2001 of the DOPT which the respondents have referred time and again in the written statement and at the instance of which the respondents have stated to have acted upon, is not only misleading, wrong and illegal, but violates the very root of the ACP Scheme and frustrates the whole purpose of the Scheme. The said O.M dated 18.07.2001 is an administrative order only which cannot override the statutory provision laid down under the Scheme nor can it be construed in a manner inconsistent with the provisions of the Scheme.

Further, in similar cases, it has clearly been held that in case of financial upgradation under the ACP Scheme, the concerned employee be given the next higher scale existing in the department as per the existing hierarchy in the same department and not that in other departments or Ministries, where different hierarchy may exist. This principle has been reiterated by the Hon'ble Delhi High Court vide its judgment dated 07.03.2003 in C.W.P No. 586 of 2001 in Ms. Bindu

Sehgal- Vs- Union of India & Ors. [SLJ 2003(3) 400].
The law has therefore been laid down in the matter which is holding the field and the contention of the respondents in the instant case is not tenable in the eye of law.

This apart, the ACP Scheme was launched pursuant to the recommendations of the fifth Central Pay Commission. It is a fact that while implementing the recommendations of the Pay Commission, the different Ministries/departments adopts different pay scales after modifications even in respect of the same cadre/category of posts in their respective Ministries/departments which are not same, and even maintain different hierarchy. As such the plea of a common hierarchy on All-India basis for a particular cadre in the instant case is an utter discrimination and violative of the settled position of law.

It is evident from the above stated facts that the applicants who were working as UDC were entitled after their financial upgradation under ACP Scheme to the scale of Superintendent, which is the next higher grade in the existing hierarchy of the respondents department and are entitled to the scale of Rs. 5500-9000/- which was rightly granted to them and as such the subsequent action of the respondents seeking to reduce their scale from Rs. 5500-9000/- to Rs. 5000-8000/- on the plea of All-India hierarchy is illegal, unfair, arbitrary, unjust, malafide and violative of the settled position of law.

2. That the applicants categorically deny the statements made in Para 8, 9, 12, 13 and 19 of the written statement and beg to submit that the respondents did not consider the representations of the applicants and issued their impugned letters rejecting the prayer of the applicants without any application of mind or discussing the points raised by the applicants, thus denying natural justice to the applicants in an arbitrary manner. Under the aforesaid Para of their written statement, the respondents have pleaded the law of equality. The respondents have misconstrued and misapplied the law of equality in the instant case. The doctrine of equality emphasise that "like persons should be treated alike" which is not the position in the instant case. In the instant case, the applicants are performing the duties and responsibilities of Superintendent but being sought to be placed in the scale of Assistants, a post non-existing in the respondent department. The posts of Superintendent and Assistants are not equal and as such the doctrine of equality is not applicable in such form here.

3. That in reply to Para 10 of the written statement, the applicants begs to state that while the respondents have sought to reduce the scale of the applicants from Rs. 5500-9000/- to Rs. 5000-8000/- at the instance of the O.M dated 18.07.2001 of the DOPT, but even thereafter they granted the scale of Rs. 5500-9000/- to some similarly situated UDC's on their financial

upgradation under ACP Scheme vide their order No. A. 32016/2001-Estt. dated 01.07.2003 (Annexure-V to the O.A) which is discriminatory and violative of the principle of equality.

4. That the applicants categorically deny the statements made in para 15, 17, 21 and 23 and beg to reiterate that the applicants have since been performing the duties and responsibilities of Superintendent and are lawfully entitled to get the scale of Rs. 5500-9000/-. The impugned actions of the respondents seeking to reduce the scale of the applicants from Rs. 5500-9000/- to Rs. 5000-8000/- are therefore unlawful, malafide, capricious and contrary to the law laid down on the matter. As such the applicants are entitled to the reliefs sought for, and the stay order deserves to be continued.
5. That in the facts and circumstances the applicants humbly submit that they are entitled to the reliefs prayed for and the Original Application deserves to be allowed with cost and until then, the stay order be kindly continued.

VERIFICATION

I, Shri Ananta Ram Baishya, S/o Late Ganeshwar Baishya, aged about 59 years, working as Upper Division Clerk in the Office of the Small Industries Service Institute, Bamunimaidan, Guwahati- 781021, one of the applicant in the instant Original Application do hereby verify that the statements made in Paragraph 1 to 5 are true to my knowledge and I have not suppressed any material fact.

And I sign this verification on this the 7th day of May, 2004.

Ananta Ram Baishya